(25,886)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 1056.

THOMAS GILCREASE, PETITIONER,

vs.

G. R. McCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, AND AL BROWN.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 16, 1917.

a In the Supreme Court of the State of Oklahoma.

No. 5773.

THOMAS GILCREASE, Plaintiff in Error,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants in Error.

(Filed Nov. 10, 1913. W. H. L. Campbell, Clerk.)

Petition in Error.

Comes now the Plaintiff in Error and shows to this Court that by consideration of the District Court of Tulsa county, Oklahoma, in a certain action therein pending, wherein this plaintiff in error was plaintiff and the said defendants in error were defendants, the said defendants in error recovered a judgment against this plaintiff in error dismissing his petition without relief and for the costs of the action. There is manifest error in the proceedings of the said court, and in the record in said cause, as more fully appears from the case-made duly settled, signed and attested in said court and which is hereto attached markes "Exhibit A" and made part hereof.

That plaintiff in error complains and assigns as error in the proceedings in the court below specifically the following errors:

First. The court erred in admitting irrelevant, incompetent and immaterial evidence offered by defendants in error, to which rulings of the court plaintiff in error at the time excepted and excepts.

Second. The court erred in rejecting relevant, competent and material testimony offered by plaintiff in error and rejected by the court, to which plaintiff at the time excepted and excepts.

b-e Third. The court erred in not separately stating findings of fact and conclusions of law as requested by plaintiff in error to do at the time the cause was submitted and before judgment.

Fourth. The court erred in holding as a matter of law that the conveyances of a minor Creek Indian allottee were not absolutely void.

Fifth. The court erred in holding as a matter of law that a conveyance made by a minor Creek Indian was susceptible of ratification at or after attaining majority.

Sixth. The court erred in holding that the findings of fact made by the court were sufficient to sustain the judgment rendered.

Seventh. The findings of fact made by the court are not sustained by the evidence and are contrary to the evidence.

Eighth. The conclusions of law made by the court are contrary to the law.

Ninth. The judgment is contrary to law and is not sustained by sufficient evidence, and is contrary to the evidence.

Tenth. The court erred in overruling the motion of plaintiff in error for new trial.

Wherefore, Plaintiff in Error prays that said judgment be reversed, the cause remanded with instructions to the court below to re-state its conclusions of law and render judgment therein for plaintiff in error or grant a new trial, as this Court may under the law determine to be just, and lawful, and that plaintiff in error recover his costs herein, and for such other and further relief as is consistent with equity and good conscience.

BIDDISON & CAMPBELL,
Attorneys for Plaintiff in Error.

* * * * * * *

1 In the District Court within and for the County of Tulsa, State of Oklahoma.

No. 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Be it remembered, That heretofore to-wit, on the 14th day of February, 1912, the plaintiff, Thomas Gilcrease, commenced his action against the Defendants, G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown, by filing his petition in the District Court within and for the county of Tulsa, State of Oklahoma.

Which said petition is in the words and figures following, to-wit:

2 STATE OF OKLAHOMA,
Tulsa County, ss:

In the District Court.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Petition.

Comes the plaintiff, Thomas Gilcrease and complains of the defendants, G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown, and for his cause of action states:

That the plaintiff is a citizen by blood of the Creek or Muskogee Nation or Tribe of Indians having been enrolled on the tribal rolls of said nation made by the Dawes Commission to the Five Civilized Tribes, June 9, 1899, as of the age of nine years, and of one-eighth degree of Indian blood, opposite Roll Number 1505.

That as such citizen and member of the Creek Nation or Tribe of Indians said plaintiff was entitled under agreement between the United States of America and the Creek or Muskogee Nation of Indians, embraced in the Act of Congress, approved March 1, 1901, and ratified by the Creek Nation May 25th, 1901, and the Supplemental Agreement between the United States of America and
3 the Creek Nation, approved June 20th, 1902, ratified by the Creek Nation, July 26th, 1902, and proclaimed by the President August 8, 1902, to an allotment of land out of the lands of said Creek Nation, consisting of One Hundred and Twenty Acres of Surplus and forty acres of homestead, and there was duly selected as the surplus allotment of said plaintiff out of the lands belonging to said nation, the following described premises to-wit:

South One-half of the Northwest Quarter, and the Northeast Quarter of the Southwest Quarter of Section Twenty-two, Township Seventeen North, of Range Twelve East,

and a patent for said land was duly executed by the Principal Chief of the Creek Nation as provided by law under date of August 25th, 1902, and duly approved by the Secretary of the Interior of the United States of America, December 15, 1902, and duly recorded in the records of the Commission to the Five Civilized Tribes at Muskogee in Record Book 2, at Page 35, and after having been thus duly executed, approved and recorded was delivered to this plaintiff, and this plaintiff thereby became vested with an absolute title in and to the land mentioned and described therein, and there was selected as the homestead allotment of said plaintiff out of the lands belonging to said Nation, the following described premises to-wit:

The Northwest Quarter of the Southwest Quarter of Section Twenty-Two, Township 17 North, of Range Twelve East,

and that said surplus and homestead contain together one hundred and sixty acres, and all lie and are situated in the County of
4 Tulsa, and State of Oklahoma.

That the defendants, G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown are all citizens of the State of Oklahoma, and residents of the city of Tulsa and County of Tulsa in said State.

That the defendant, G. R. McCullough, is now President of the First National Bank of Tulsa, Oklahoma, and A. E. Bradshaw is now Cashier of the First National Bank of Tulsa, Oklahoma, and that Al Brown is an officer and employee of said First National Bank, but in exactly what capacity he is employed in said bank this plaintiff has no information and is unable to make exact with any more definiteness than above stated. That prior to his acquisition

of his interest in the First National Bank of Tulsa, Oklahoma, G. R. McCullough had been a stockholder and officer in the Bank of Oklahoma, and that A. E. Bradshaw was also a stockholder in and an officer of said Bank of Oklahoma, of Tulsa, Oklahoma, and said McCullough and said Bradshaw acquired large interests in the First National Bank of Tulsa, Oklahoma, and affected a consolidation of the business of the Bank of Oklahoma with the First National Bank of Tulsa, Oklahoma, and said Bank of Oklahoma became merged in said First National Bank of Tulsa, Oklahoma. That the defendant, Al Brown, is now, and has for several years last passed been a business associate of said McCullough and Bradshaw. That the defendant, H. B. Martin, is an attorney at law and has been practicing law in the city of Tulsa, State of Oklahoma for about four years last passed, and was an attorney for the Bank of Oklahoma prior to its merging with said First National Bank of Tulsa, Oklahoma,
5 and subsequent to the consolidation of said Banks has been an attorney for the First National Bank of Tulsa, Oklahoma.

That prior to the consolidation of the Bank of Oklahoma with the First National Bank of Tulsa, Oklahoma, said Bank of Oklahoma had nationalized and become the Oklahoma National Bank, of Tulsa, Oklahoma, and that the consolidation of said Bank of Oklahoma which had become the Oklahoma National Bank with the First National Bank of Tulsa, Oklahoma, was effectuated during the summer or early fall of the year 1911, the precise date of said consolidation this plaintiff is unable to state.

That during all of the period covered by the transactions hereinafter complained of all the defendants have been business associates, and connected with one another in various business relations.

That the land of the plaintiff here before described is situated in the oil field which is commonly known as Glen Pool, and is underlaid with a large and valuable deposit of petroleum.

That in the month of September, 1906, after the opening of the Glen Pool field, the plaintiff herein by and through his father and guardian, William L. Gilcrease, entered into a departmental oil and gas mining lease with one W. H. Milliken embracing the lands herein before described, and said Milliken proceeded to develop same for oil and to drill upon said land between the fall of the year 1906 and the summer of 1909 in all forty-nine wells upon said lands.

That in August of 1909, forty-two of said wells were producing wells and there was being produced from said land more
6 than twenty-five thousand barrels of oil per month.

That this plaintiff was then a minor, inexperienced in all business affairs, and without any knowledge of the real value of the property involved in this controversy.

That the defendants herein were all men of mature judgment, wide business experience, and extensive knowledge of the conditions existing in the Glen Pool Oil field and of extensive and accurate knowledge of oil properties situated in said field, and well knew the conditions and value of the particular property involved in this controversy and were all acquainted with its enormous value as an oil property.

That all of said defendants were well acquainted with this plaintiff and with his situation; with his want of age and experience, and knew that he had in fact no knowledge of the real value of his property, and that he was without business experience, judgment, capacity and discernment to deal with them or with others in regard thereto.

This plaintiff further avers that the defendants herein, and each of them, were well acquainted with the forms of departmental oil and gas mining leases upon the lands of Indian Allottees of the Creek Nation, and were well acquainted with the terms of such leases and of the lease made by the guardian of this plaintiff with William H. Milliken covering the lands hereinbefore described, and that said lease among its other terms contained the provisions that at its expiration on February 8, 1911, the lessee was to leave upon the premises all of the casing in each of the producing wells which he had drilled thereon, and that said wells so drilled and cased
7 were worth, to the property under the condition which by the terms of said lease with Milliken they were to be left at the expiration thereof, and added, more than one hundred thousand dollars to the value of the property, and that the value of said property at the date of the expiration of the lease with Milliken would be more than three hundred thousand dollars, and also well knew that by reason of the youth, inexperience and want of business experience and want of judgment of the plaintiff herein the said plaintiff was not aware of the actual value of said property.

That sometime prior to the 24th day of August, 1909, the defendant, H. B. Martin, had been the regular retained and paid attorney of the plaintiff in this cause, and that said defendant, H. B. Martin, was at that time a member of the firm of Hainer & Martin, regular practicing attorneys of the city of Tulsa, Oklahoma, and that on or about the first day of January, 1909, the plaintiff herein had regularly employed and retained said firm of attorneys to counsel and advise him and to attend to his legal business; to collect moneys that were due him from rents and royalties accruing from the land hereinbefore described, and to advise and direct him in the management of his business affairs generally.

That the defendant, H. B. Martin while a member of the firm of Hainer & Martin, and while so retained and employed by this plaintiff had familiarized himself with the business affairs of the plaintiff and particularly with reference to the property in question in this suit, and the development of said property under the oil and gas mining lease hereinbefore referred to.

That the plaintiff reposed utmost confidence in the business
8 judgment, faithfulness, integrity, and ability of said attorney, H. B. Martin, and made the office of said defendant, Martin, his headquarters from about the first day of January, 1909, and continued to make such office his headquarters during all of the times hereinafter mentioned, and that during said period this plaintiff was so thoroughly under the direction of said H. B. Martin and reposed such confidence in him, and in his advice, that he was willing to do almost without question anything that was counselled and directed

by said Martin or anything the said Martin said was right or proper for him to do.

That the plaintiff was conscious of his own want of personal experience, business judgment and ability, and relied implicitely upon the judgment, advice, suggestion and directions of said attorney, H. B. Martin, and such confidence in and dependence upon said attorney on the part of the plaintiff was well known to each and all of the defendants herein.

That said defendants, knowing the status and value of the properties herein before described, and well knowing the situation of the plaintiff in this cause with reference to his attorney, H. B. Martin, and knowing his want of business judgment and discretion, and his want of knowledge of the actual value of the property, and all of the facts herein set out, and they being desirous to possess themselves of this valuable piece of land, and to enjoy the wealth which it was producing, and would for a long period of time continue to produce, at some time prior to the 24th day of August, A. D., 1909, formed a conspiracy to defraud the plaintiff out of said property for a mere fraction of its real value and entered upon
9 a conspiracy and agreement to do and perform all things which might become necessary to effectuate that purpose and to do and perform all things which are herein set out and complained of, and for the purpose of effectuating said design and carrying out said conspiracy, they did on or about the 24th day of August, A. D. 1909, and while the plaintiff herein was still a minor and incapable of making any valid lease of oil and gas mining properties or other contract with reference to the land hereinbefore described, procured the plaintiff to make and enter into an apparent oil and gas mining lease covering the lands hereinbefore described to begin at the expiration or cancellation of the William H. Milliken lease hereinbefore referred to, providing for a royalty of all oil produced and saved from said premises and one hundred dollars for the product of each and every gas well while same was being sold off the premises, and which apparent oil and gas mining lease appears of record in the office of the Register of Deeds in Book 70, at page 10, and a copy of which is attached to this petition marked exhibit "A" and made a part hereof to the same effect as if said instrument was set out in full in this complaint, and that it was the understanding and agreement at the date of the execution of said pretended lease above set out that whenever this plaintiff should become a lawful age he was to execute an oil and gas mining lease and to receive a cash consideration therefor of seventeen thousand dollars in money and a royalty of all oil produced from the premises.

That all of the negotiations at the time of making of said pretended lease above set out were made with the defendant, A. E. Bradshaw, by and through the defendant, H. B. Martin, he,
10 the said Martin, being at the time the regularly retained, paid and acting attorney of this plaintiff, and that said H. B. Martin actually prepared the lease hereinbefore referred to as exhibit "A," and made a part of this petition, and during all said negotiations so advised this plaintiff and counselled with him in

regard thereto, and then and there well knowing that said property was of the value as hereinbefore alleged, stated and represented to the plaintiff that a bonus of seventeen Thousand Dollars and a royalty of one-eighth of the oil produced from said premises was the best price that could be obtained for same, and was all that said property and premises were worth, and that said defendant, H. B. Martin, made said representations to the plaintiff for the purpose of inducing him to subscribe said paper writing thereby putting himself in a position where he would be prima facie lessor of said premises, and apparently bound to the defendant, Grant R. McCullough.

That at the time the defendant, H. B. Martin, and all of the other defendants, well knew that the actual value of a valid lease upon said property in a form as the one signed by the plaintiff to said Grant R. McCullough was at least Three Hundred Thousand Dollars, and that the representations made by the defendant Martin to the plaintiff were at the instigation of, and with the knowledge of, and concurrence therein of the other defendants and were made for the purpose of inducing the plaintiff to sign said paper writing, thereby putting himself in the position where he would be apparently bound, and effectuating their final consummation of their design to strip him of his property for a mere fraction of its value.

11 That the defendant- herein well knew that the paper writing of August 24th, 1909, hereinbefore set forth as exhibit "A" was not a valid instrument in law but they also knew that the plaintiff was unaware of the want of validity in said instrument because of said reliance upon the counsel and advice and direction of his attorney, H. B. Martin.

That prior to the 24th day of August, 1909, and towit: on the 18th day of September, 1908, the plaintiff had executed a warranty deed for the lands herein before described to his mother, Lizzie Gilcrease, which deed was duly recorded in the office of the Register of Deeds in Record book 33 at page 529, in Tulsa county, Oklahoma, and so appeared of record on the 24th day of August, 1909, but that said conveyance or attempted conveyance to Lizzie Gilcrease was understood by the plaintiff in this cause and by said Lizzie Gilcrease and by all the defendants herein as being simply in trust for the plaintiff, and the defendants knew that the plaintiff had from said Lizzie Gilcrease a declaration of trust, and a deed, but that the defendants in furtherance of their design and for the purpose of so clouding the title of the plaintiff to said land as to make it as difficult as possible for him to recede therefrom, they procured the execution by said Lizzie Gilcrease to the defendant, Grant R. McCullough, on the 4th day of September, 1909, of a pretended oil and gas mining lease upon the property hereinbefore described, the recited consideration in said pretended lease being the consideration named in the lease of August 24th, 1909, from the plaintiff to said Grant R. McCullough, and no other consideration whatever in fact being

12 given, and further reciting that said Lizzie Gilcrease adopted, ratified and confirmed said lease from Thomas Gilcrease to Grant R. McCullough, a copy of said pretended oil and gas mining

lease from Lizzie Gilcrease to Grant R. McCullough of September 4th, 1909, is attached to this petition, marked exhibit "B," and made a part of this petition.

That said pretended oil and gas mining lease above set forth as exhibit "B" was prepared by the defendant, H. B. Martin, who was at the time duly retained, paid and acting attorney of the plaintiff, and the said Lizzie Gilcrease being at that time at the town of Eureka Springs in the State of Arkansas, said Martin made a trip to Eureka Springs and procured said Lizzie Gilcrease to sign and execute and deliver said paper writing all of which was done by the defendant Martin with the knowledge and consent and at the instance of the other defendants herein and done as a part and parcel of the conspiracy formed and entered into by and between the defendants herein and for the purpose of carrying out said design and conspiracy, and accomplishing their purposes of obtaining the property of the plaintiff herein before described for a nominal consideration which would be but a fraction of its real value.

That in the furtherance of said conspiracy the defendants on or about the 12th day of April, 1910, procured the appointment of A. E. Bradshaw as guardian of the plaintiff, the application for said appointment being made to the County Court of Tulsa county, Oklahoma, said application being made by the defendant E. A. Bradshaw, and the defendant, Bradshaw being represented therein by the defendant, H. B. Martin, and said H. B. Martin being at the
13 time the regularly retained and paid attorney of the plaintiff herein, and that in order to procure the appointment of said A. E. Bradshaw as such guardian the defendant procured from the father of the plaintiff his written consent to such appointment and waiver of the right to act as such guardian.

That thereafter and on or about the 21st day of April, 1910, in furtherance of said conspiracy, and for the purpose of continuing the relationship between the plaintiff herein and the defendant Martin and the other defendants, said defendant Martin procured from the plaintiff herein a written contract of employment wherein and whereby the said defendant Martin, although still a member of the firm of Hainer & Martin, was employed individually as the attorney of the plaintiff to represent him in general in and about all of his litigation, and all business affairs for the term of one year from the 21st day of April, 1910, which contract was made and entered into with full knowledge of the other defendants herein. A copy of which contract is hereto attached, marked exhibit "C" and made a part hereof.

That on or about the 22nd day of October, 1910, the plaintiff applied to the defendants for a release from the apparent contract and agreement which he had entered into and herein before set forth, and which stood in the name of the defendant, Grant R. McCullough, but which was in reality for the benefit of all the defendants, and upon the defendants refusing to release said pretended contract, he counseled with his attorney, H. B. Martin, in whom he still reposed the utmost confidence, and who was still in his employ, and regularly retained and paid by the plaintiff, and was

14 advised by his said attorney that he would be compelled to carry out said pretended contract whether he wished to do so or not, and that he was bound thereby, although in truth and in fact said defendant Martin well knew that said pretended contract was not valid in law and could not be enforced and was not binding on the plaintiff, but said Martin advised the plaintiff that he would be compelled to carry out said contract as a part of the fraudulent and corrupt design previously formed by the defendants herein of obtaining the property of the plaintiff, and said defendant Martin further advised the plaintiff that if he could procure a part of said contract for a price double that at which the plaintiff had made said contract, the best thing for the plaintiff to do was to take back from Grant R. McCullough an assignment of a half interest in the same for the sum of Thirty Thousand Dollars, and in order to induce into the mind of said plaintiff that he, Martin was acting in perfect good faith, and to continue his domination over the plaintiff, and over the judgment of the plaintiff, said to him, that he, Martin, would take a half interest in said half. In other words, that they would each take an assignment of one-fourth interest from McCullough, and each pay fifteen thousand dollars therefor.

That the plaintiff still reposing confidence in his said attorney, and still being dominated by him, and still relying on such attorney's integrity and sound business judgment and ability, and on the representations so false- and fraudulently made by said defendant Martin for the purpose of carrying out the conspiracy herein alleged, the plaintiff acceded to said Martin's suggestions and

15 representations, and it was agreed that said Grant R. McCullough should assign to the plaintiff a one-fourth interest in his pretended lease and to the defendant H. B. Martin, a one-fourth interest in said pretended lease, and that the plaintiff should pay for such one-fourth interest the sum of fifteen thousand dollar-, and said H. B. Martin should pay for such one-fourth interest a like sum of fifteen thousand dollars.

That previous to the 22d day of October, 1910, the defendants had paid to this plaintiff the sum of four thousand dollars of the seventeen thousand dollars which they had on the 24th day of August, 1909, agreed to pay for the lease upon said premises, leaving still due to the plaintiff according to the terms of the pretended lease of August 24th, 1909, and the contract and agreement under which same was made, the sum of thirteen thousand dollars, and this plaintiff relying upon the representations of the defendants, and particularly of the defendant, H. B. Martin, his attorney, paid over to Grant R. McCullough the sum of Two thousand dollars in money, being the difference between said thirteen thousand dollars and the sum of fifteen thousand dollars, and which he, the plaintiff, was to pay for such one-fourth interest, and said transaction being in full satisfaction of all balance and remainder of the seventeen thousand dollars agreed to be paid the plaintiff under the lease of August 24th, 1909.

That although the defendant, H. B. Martin, represented that he was paying a like sum of fifteen thousand dollars to the defendant,

Grant R. McCullough, for an assignment of a one-fourth interest in the lease upon the premises hereinbefore described, said Martin did not in fact pay said sum of money or any other sum for the assignment to him by McCullough of the one-fourth interest to said Martin, and said McCullough for the purpose of carrying out their design fraudulently represented to the plaintiff that said payment of fifteen thousand dollars was actually made by Martin, and that McCullough had actually assigned to Martin a one-fourth interest in said leasehold estate, all of which representations the plaintiff herein at the time believed and relied on and continued to believe up until a few days previous to the filing of this petition.

That thereafter and to-wit: on the 8th day of February, 1911, which was the day on which it was understood by all the parties that the William H. Millkin lease hereinbefore referred to expired, the defendants herein in furtherance of the conspiracy and design hereinbefore alleged, and while the defendant, A. E. Bradshaw was still acting as the guardian of this plaintiff, never having been discharged by the court by which he was appointed or any other court, and while the defendant, H. B. Martin, was still retained, paid and acting as the attorney of the plaintiff, and while the closest business intimacy still existed between all of the defendants, and while the plaintiff was still relying upon the good faith of his guardian and of his counsel, and under the influence of his counsel and guardian, and while the plaintiff still believed the representations to him made by his attorney, Martin, and that he was bound by his former agreement with the defendant, Grant R. McCullough, and that Grant R. McCullough owned a one-half interest in the lease upon the premises, and that the plaintiff owned a one-fourth interest therein, and that the defendant, H. B. Martin owned the other one-fourth interest therein, and while the plaintiff was still unadvised of the actual value of the property and of the lease upon same, and was still without business experience and judgment necessary to enable him to appreciate the character of the transaction upon which he was about to enter, and while the property was still of the value hereinbefore alleged, and in the condition hereinbefore alleged, and while the plaintiff was still under the influence of the representations in regard thereto, which had been made to him by his counsel, guardian and the other defendants, and while the plaintiff was still incapable of making an oil and gas mining lease except through a duly appointed guardian, properly authorized thereunto by an order of the probate court by reason of the following Acts of Congress, to-wit: Section Seventeen and of the Act of Congress of June 30th, 1902, commonly known as the Supplemental Agreement, which is in words and figures as follows:

"And lease for mineral purposes may also be made with the approval of the Secretary of the Interior and not otherwise. Any agreement or lease of any kind or character violative of this paragraph shall be absolutely void, and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion

of its invalidity." And of Section Four of the Act of Congress of March 1st, 1901, which is in words and figures as follows, to-wit:

"Allotments for any minor may be selected by his father, mother, or guardian, in the order named and shall not be sold during his minority."

18 And also the Act of Congress of April 28th, 1904, section two whereof provides as follows:

"And full and complete jurisdiction is hereby conferred upon the District Courts in said Territory in the settlement of all estates of decedents, the guardianships of minors and incompetents, whether Indians, Freedmen or otherwise."

And also of the Act of Congress of March Third, 1905, Section one whereof provides:

"No lease made by any administrator, executor, guardian or curator shall be valid or inforcible without the approval of the court having jurisdiction of the proceeding."

And also of Section 19 of the Act of Congress of April 26th, 1905, which provides as follows:

"And every deed executed before or for the making of which a contract or agreement was entered into before the removal of restrictions be and the same is hereby declared void."

And also of Section 20, which provides:

"That allotments of minors and incompetents may be rented or leased under order of the proper court."

And also Sections 2, 3, 5, & 6 of the Act of Congress approved May 27th, 1908, in words and figures as follows, to-wit:

"That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottees if an adult, or by the guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed — years, without the privilege of renewal; Provided, that leases of restricted lands for

19 oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise: And provided further, that the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this act, shall include all males under the—(age)—of twenty-one years and all females under the age of eighteen years."

Section 3:

"That no oil, gas or other mineral lease entered into by any of said allottees prior to the removal of restrictions requiring the approval of the Secretary of the Interior shall be rendered invalid by this Act, but the same shall be subject to the approval of the Secretary of the Interior, as if this act had not been passed: * * * all of which was known to the defendants, and the actual value of the property at the time being also known to the defendants, and the value of the wells upon the property being well known to the de-

fendants and it being well known by them to be of the value of not less than three hundred thousand dollars, the defendants fraudulently and corruptly induced the plaintiff, as the final step in the consummation of the conspiracy and design which they had entered into, to execute and deliver to them a certain paper writing purporting to be an oil and gas mining lease upon the terms
20 herein before described, for a royalty of one eighth of the oil mined and saved from said premises and purported to vest in Grant R. McCullough a one-half interest, in the plaintiff, Thomas Gilcrease, a one-fourth interest, and the defendant, H. B. Martin, a one-fourth interest. A copy of said lease or contract is attached hereto, marked exhibit "D," and made a part hereof.

That by the terms of said contract or lease of February 8th, 1911, the defendant, Grant R. McCullough, purported to become the owner of one-half of the equipment on said premises and the defendant, H. B. Martin of one-fourth interest in said equipment then on said premises.

That the casing and lining in the forty-two wells upon the premises at that date was worth more than thirty-six thousand dollars. In other words, more than twice the amount of the bonus originally promised and agreed to be paid by the defendants to the plaintiff for the entire lease upon the whole premises with forty-two producing wells situated thereon.

That upon the execution of the lease of February 8th, 1911, herein before referred to as exhibit "D," the defendants procured the plaintiff to execute his note to the First National Bank of Tulsa, Oklahoma, for the sum of one thousand dollars to procure money for the purpose of employing hands and working the lease in question, and to purchase the necessary pumps, machinery and equipment for use upon said premises, and did not themselves invest or expend a single dollar in the development, equipment or working of said property, but bought all of the machinery which was bought for said premises on a credit and it was paid for out of the
21 production from said premises, and that said property has produced and the defendants have taken therefrom since the 8th day of February, 1911, and there has been produced and saved from said premises and marketed and sold therefrom one hundred and seventy-five thousand barrels of oil of the value of Seventy-two Thousand Dollars, and that out of said production the plaintiff has received only the royalty of one-eighth plus one-fourth of the remainder after there was paid therefrom the operating expenses and amounts for the machinery and equipment to work said lease, and the defendants have received the other three-fourths of the proceeds of said lease over and above the royalty.

That on or about the 11th day of December, 1911, the defendant, H. B. Martin, offered to convey and did convey to this plaintiff for a valuable consideration in money and property then paid and delivered to said H. B. Martin, amounting to the sum of Thirty-one Thousand Dollars, and assigned and transferred to the plaintiff, three-fourths of the interest then held and claimed by said Martin in said lease, that is to say three-sixteenths interest in the entire

lease, and that said H. B. Martin had previously by an assignment which appears of record in the office of the Register of deeds of Tulsa county, Oklahoma, conveyed to the defendant, G. R. McCullough, who is the same person as Grant R. McCullough referred to herein, a one-fourth part of the interest claimed by Martin in said lease, which would be one-sixteenth's interest in the entire lease. A copy of said assignment from Martin to Gilcrease is hereto attached, marked exhibit "E," and made a part hereof, and a copy of said assignment from Martin to McCullough is hereto attached,
22 marked exhibit "F" and made a part hereof.

That the defendants have since the 8th day of February, 1911, derived from sales of oil taken from said premises and appropriated to their own use that which was legally and equitably the property of this plaintiff, and the defendants, nor either of the defendants, had any right, title or interest of any right thereto.

That the defendant Al Brown claims an interest in said lease but the particular nature and character and extent of said interest this plaintiff is unable to state, nor is the plaintiff able to allege what proportion of the moneys derived from the sale of oil taken from said premises since February 8th, 1911, said defendant, Al Brown has received and appropriated to his own use.

That as hereinbefore stated and alleged, the only sum or amount ever paid by these defendants or either of them for the apparent lease obtained by them from the plaintiff through fraud and undue influence herein alleged and recited, was the sum of four thousand dollars, two thousand dollars of which has been repaid by the plaintiff in money and the other two thousand dollars of which has been paid many times over by moneys derived by the defendants from the sale of oil taken by them from said property so that there is now due from this plaintiff to the defendant nothing whatsoever, but on the contrary the defendants are indebted to the plaintiff in a sum exceeding thirty thousand dollars, for and on account of money which they have had and received as proceeds from the sale of oil taken from the premises and by them appropriated to their own
23 use and benefit, and by virtue of the fraudulent practices hereinbefore recited; and the plaintiff has not received a dollar of the defendants, but if it shall turn out that the plaintiff is mistaken in this, or if it shall be adjudged and determined that any sum is due from the plaintiff to the defendant or either of them on account of the matter and things herein alleged and stated, the plaintiff now and here offers to return and to repay to said defendants or such of them as the court may adjudge is entitled to receive same any such sum or sums as the court shall find such defendant or defendants entitled to, and to do full and complete equity in the premises, and hereby submits himself fully to the jurisdiction of this court and prays that an accounting be had between him and said defendants, and offers to do whatsoever shall be adjudged by the court to be right and proper for him to perform, but in the end that he may have cancellation and rescission of the pretended contract now held by the defendants and under which they claim the premises in question, and upon which the oil is being taken and produced

therefrom, and asks that the defendants and each of them be required to account fully for all oil or substance taken from said premises under said contract, and for all moneys that they have derived by reason of the same.

That at the time the plaintiff obtained the assignment from the defendant, H. B. Martin, of three-sixteenths interest in the lease of February 8, 1911, being three fourths of the interest in said lease claimed by said Martin, he paid said Martin by surrendering to said Martin promissory notes theretofore given by said Martin to
24 said the plaintiff for five thousand dollars, and cancelled an open account owed by said Martin to the plaintiff for borrowed money to an amount of thirty-five hundred dollars, and transferred to said Martin, one promissory note, executed by George W. Rose to the plaintiff for the sum of Three thousand dollars, secured by real estate mortgage, and also one note executed by S. C. Maxey and wife to the plaintiff for the sum of fifteen hundred dollars, secured by mortgage on real estate, and executed to said H. B. Martin, deeds of conveyance for the following described real estate situated in Tulsa, and Osage counties in the State of Oklahoma, to-wit: One deed for the South 50 feet of Lot 4, block 183, one deed for the East 37½ feet of Lot 12, Block 1, Bliss Addition, one deed for Lot 1, Block 2, Brennan Reed Addition, and one deed for Lot 8, block 1, Brennan Reed Addition, and one deed for Lots 6, 7, 8, 9, 10, 11, in Block 3, of the Northmoreland Addition, Tulsa, Tulsa county, Oklahoma, and one deed to the Southeast quarter of Section 25, Township 17 North, Range 12, East, in Tulsa County, Oklahoma, and one deed to the N. W. ¼ of Section Seventeen, Township Twenty North, Range 12 East, and the S. W. ¼ of the S. W. ¼ of Section 20, Township 20 North, Range 12 East, Osage county, Oklahoma.

That said paymnts, transfers and conveyances by the plaintiff to the defendant Martin were wholly without consideration for the reason that the alleged and apparent interest in the lease aforesaid, was acquired by him as a result of the conspiracy entered into and carried out by the defendants as herein stated, and obtained from this plaintiff by fraudulent practices herein set out, and the apparent consideration given by Martin to the plaintiff of Thirty One Thousand Dollars above mentioned was in truth and
25 in fact but a return from said Martin of all the property and all of the value received by the defendant Martin from the plaintiff at the time of the transaction whereby Martin assumed to assign to the plaintiff three sixteenths of the lease of February 8, 1911, and obtained from the plaintiff thirty one thousand dollars in choses in action and real estate.

That the property described herein is still producing large quantities of oil to-wit: more than fifteen thousand barrels per month and the monthly production is of the value of Nine thousand dollars taking the present market price. That the defendants or some of them are continuing to receive, and are appropriating to their own use nine sixteenths of the proceeds of the sales of oil produced from said premises, and that the plaintiff, although the rightful

owner of all of said oil has only received from said property seven sixteenths of the proceeds of the sales of oil therefrom after deducting the operating expenses plus his royalties of one-eighth of the entire production, and that the defendants unless restrained by proper order of this court will continue to produce oil from said premises and to appropriate 9-16ths of the oil so produced after deducting 1-8th royalty therefrom to their own use and benefiit, and that it is necessary for the best interest of said property that oil continue to be produced therefrom, and that the operation of the wells upon said land be continued and oil taken therefrom, and to this end that some competent person be appointed receiver to take and receive and hold subject to the order of this court all that portion of the oil produced from said premises over and above the one-eighth royalty which by the terms of the instrument set
26 out to be cancelled by this suit is due the plaintiff, and 7-1-ths of the products from said premises which by the terms of said instrument this plaintiff is entitled to have and received and which the defendants admit the plaintiff is entitled to receive.

That unless the property involved in this suit is continuously operated, that is to say, if said forty-two producing wells upon the premises described in this petition are shut down and oil not taken from them, such action will produce great damage to the property and the property will never again be worth as much after such wells are shut down as before they were so shut down.

Whereas, on the other hand if the defendants are allowed to continue the operations of said property and to continue to take oil therefrom they will continue to sell and dispose of same, and to appropriate 9-16ths of the proceeds to their own use and behoove, and the total amount of the oil in and under said premises will to that extent be damaged, and the only remedy which will be left to this plaintiff if he prevails in this cause will be a personal judgment for the value of the oil so taken by them and appropriated by them and appropriated to their own use, and the value sought to be recovered by the plaintiff herein will be greatly diminished.

Plaintiff further states to the court that both of the defendants, Al Brown and A. E. Bradshaw are now and have at all times been parties to the conspiracy herein alleged and set forth, and to the various acts and things that have been done in furtherance thereof, and have had full knowledge of all that has been done in the carrying out of said conspiracy, participating in the intent thereof,
27 and in the fraud thereof, and are now claiming and asserting some right, and interest in and to the property in question by virtue of contracts and leases herein set out and referred to and which stand on the record in the name of the defendant, G. R. McCullough and H. B. Martin, but that the precise extent of the interest of each of such defendants is unknown to the plaintiff as is also the precise nature of the instruments or contracts, promises or agreements under which they are holding or claiming an interest in said property, but all of the apparent claims and interests of said defendants, Bradshaw and Brown, as of the other defendants,

are wholly fraudulent for and by reason of the matters and things in this petition set out.

Plaintiff further states that he did not at any time prior to the first day of February, 1912, know of the conspiracy between the defendants herein or of the interest in the said lease of said guardian, nor of said Al Brown, nor that the defendant Martin had not paid the fifteen thousand dollars for the one fourth interest in said lease, nor was he at any time prior to that date conscious of any of the frauds or undue influence of said Martin and of said Guardian or of any of the defendants herein, and had plaintiff known any of said facts, he would not have executed any of said instruments.

Premises considered, plaintiff prays:

First. That the defendants and each of them be required by proper order of this court to refrain from the sale or disposition of any oil now on hand taken from said premises described
28 herein or which they are now taking from said premises which may be by them taken from said premises at any time during the pendency of this litigation and from receiving the proceeds of any oil which may have been taken from said premises and sold to any person, firm, or corporation, or now in the pipe line of any such person, firm or corporation, and for which they have not yet received payment.

Second. That some discreet and competent person, competent to manage and operate said lease be appointed receiver to take charge of 9-16ths interest in the lease hold upon the premises described herein now claimed by all the defendants and which 9-16ths interest the plaintiff claims in equity and good conscience to be his property, and which he is seeking to recover in this cause by cancellation of the instrument under which the defendants are claiming title to same, and that said receiver be empowered and authorized to market said 9-16ths of the whole amount of oil taken from said premises over and above the royalty and operating expenses, and to collect and receive moneys derived from the sale thereof and to hold same subject to the order and disposition of this court, and also to market that portion of any oil on hand at the filing of this suit which would be the part thereof claimed by the defendants under the instrument the cancellation of which is sought in this action, and to receive money for the same and hold said money subject to the order and disposition of this court, and also to collect and receive, pay for the portion of any oil now in the hands of any person or company and claimed by the defendants which would have been coming to the defendants had this suit not been
29 instituted and to hold all of said moneys subject to the order of this court, and to do such other and further things as the court shall by its order of appointment or any order subsequently made thereto, and to join with the plaintiff herein the operations of said premises, and to do and perform all such acts in furtherance thereof and in relation to such premises, and the property as will protect the rights of all parties hereto under the authority and direction of this court by its order of appointment and such other and further order as the court shall from time to time make.

Third. That the defendants and each of them be required to answer this bill of complaint and to show, but not under oath, answer under oath being hereby expressly waived, what amount of oil has been taken from the premises by them since the 8th day of February, 1911, exactly what amount has been expended by them for the equipment and for operating expenses, and exactly what sum they and each of them have derived and received from said proceeds in sales of oils taken from said premises, over and above the 1-8th royalty paid to the plaintiff and to state and set forth such sums and portions as may have been paid by the plaintiff as his admitted share of the transaction from the lands and premises described herein, and generally to account to this plaintiff for any and all sums of money, all property, assets and values of every description that they or each of them have received from the premises mentioned and described in this petition or from or by virtue of any of the transactions herein complained of, to the end that the proper amount which may be due from each of said defendant- to the plaintiff for and on account of said matters and things may be ascertained and determined, and
30 that upon such accounting the plaintiff have judgment against said defendants and each of them for any and all sums which may be shown to have been received and obtained by them.

Fourth. That the court decree the cancellation of each and every of the several instruments under and by virtue of which the defendants herein or either of them are claiming and asserting any right, title or interest in or to the premises in controversy or the oil or gas in and under said premises, or any leasehold interest therein or thereto, or any right to mine and to take oil and gas therefrom, and particularly that this court by its decree cancel, set aside and hold for naught the apparent lease of the plaintiff to the defendant Grant R. McCullough *R. McCullough,* dated August 24th, 1909, and the pretended lease of Lizzie Gilcrease to Grant R. McCullough of September 5, 1911, and the pretended lease of Thomas Gilcrease to H. B. Martin and G. R. McCullough of February 8th, 1911, and the pretended assignment of H. B. Martin to G. R. McCullough of March 23d, 1911, and that each and every of said instruments be declared null and void, and the defendants and each of them and all persons claiming by, through or under them or either of them be forever enjoined from asserting any right, title, interest or claim in and to said premises or any oil under said premises under and by virtue of any or either of said pretended contracts, leases, assignments and agreements, and that the title of the plaintiff in and to the premises hereinbefore described and the oil and gas therein and thereunder be quieted against the pretended interests of each and all of the defendants herein.

Fifth. That the defendant, H. B. Martin be required to
31 restore and refund to the plaintiff all the property acquired from the plaintiff under and by virtue of the transaction of December 11, 1911, herein before particularly set out and to repay to the plaintiff the amount for which said defendant Martin received credit on his note and indebtedness, and if he has not con-

verted into money the choses in action delivered by the plaintiff to him, being made by third parties secured by real estate mortgages, that said notes be required to be by said defendant Martin returned and reassigned to the plaintiff, and that as to all of the real estate conveyed by the plaintiff to Martin, that the said conveyances from the plaintiff to Martin be cancelled, set aside, and held for naught and the title thereof reinvest in the plaintiff as fully and to the same extent as if any conveyances whatsoever had never been made by him to the defendant Martin, and if it appears that any of said real estate or choses in action has been disposed of by said Martin so that it cannot be restored in kind or the title thereto reinvested in the plaintiff, that the defendant Martin be required to repay to the plaintiff the value ther-of, and that any receiver appointed for the disputed portion of the oil involved in this cause be also authorized and directed to take charge of any of the choses in action transferred by the plaintiff to the defendant Martin during the pendency of this litigations, and to collect and receive from the debtors in said choses in action sums of money evidenced by the same or any part thereof remaining unpaid, and to do and perform any and all things necessary therein, and to hold the proceeds thereof subject to the order and discretion of this court.

32 Sixth. That the court make and enter any such further decree and make all such other and further orders herein as may be, and which the court shall in equity and good conscience deem proper.

P. C. WEST AND
BIDDISON & CAMPBELL,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Tulsa County, ss:

Thomas Gilcrease, of lawful age, being first duly sworn on his oath states, that he has read the above and foregoing petition; knows the centents thereof, and that the statements and allegations therein contained are true.

THOMAS GILCREASE.

Subscribed and sworn to before me this 14th day of February, 1912.

[SEAL.] W. W. STUCKEY,
Clerk District Court,
By J. Q. CHAMBERS, *Deputy.*

33 EXHIBIT "A."

Oil and Gas Mining Lease.

This Agreement, Made this 24th day of August, 1909, by and between Thomas Gilcrease, Party of the first part, and Grant R. McCullough, party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of Seventeen Thousand ($17,000.00) Dollars, the receipt of which is hereby acknowledged, and for the further consideration of the rents, covenants and agreements hereinafter provided, has granted, demised, let and leased and does by these presents grant, demise, let and lease unto the party of the second part, his heirs, successors and assigns all the oil and gas in and under that certain tract of land hereinafter described and also all the said tract of land hereinafter described, for the purpose and with the exclusive right of drilling and operating thereon for said oil and gas, both as to wells now opened and operated upon said land and as to all wells which may hereafter be drilled, opened and operated thereon, which said tract of land is situated in Tulsa county, State of Oklaohma, and described as follows, to-wit:

The South Half (½) of the Northwest Quarter (¼) and the North Half (½) of the Southwest Quarter (¼) of Section Twenty-two (22), Township Seventeen (17) North of Range Twelve (12) East of the Indian Meridian, containing 160 acres.

The said party of the first part grants the further privilege unto the party of the second part, his heirs, successors and assigns of us-
ing sufficient water and gas from the premises Necessary to
34 the operations thereon and all rights and privileges necessary
or convenient for conducting said operations and the transportation of oil and gas, and the right to remove at any time, machinery or fixtures placed on the premises by said party of the second part.

To have and to hold the same unto the said party of the second part, his heirs, successors and assigns, for the term of fifteen years and as long thereafter as oil or gas is being produced therefrom by said party of the second part, his heirs, successors or assigns. The term of this lease to begin at the time of the expiration or cancellation of a certain lease of said premises heretofore executed by William L. Gilcrease, as guardian of Thomas Gilcrease, to William H. Millikin, and the said term of this lease shall run for fifteen years thereafter and as long thereafter as oil and gas is being produced as aforesaid.

In consideration whereof the said party of the second part agrees to deliver to the party of the first part, in tanks or pipe lines, the one-eighth (⅛) part of all oil produced and saved from the leased premises. And should gas be found on said premises in paying quantities, said party of the second part agrees to pay One Hundred ($100.00) Dollars yearly, for the product of each gas well while the same is being sold off the premises, but the party of the second part shall have the right to use sufficient gas, oil and water to drill all wells and for all purposes necessary or convenient in operating the same.

All rentals and other payments may be made directly to the party
of the first part or may be deposited to his credit at the Bank
35 of Oklahoma in the City of Tulsa.

All the conditions and terms of this grant and lease shall

extend to and be binding upon the heirs, successors and assigns of the parties hereto.

In Witness Whereof, We have hereunto set our hands this 24th day of August, 1909.

THOS. GILCREASE,
Party of the First Part.
GRANT R. McCULLOUGH,
Party of the Second Part.

36 STATE OF OKLAHOMA,
County of Tulsa, ss:

On this 24th day of August, 1909, before me, A. B. Davis, a Notary Public, in and for said county and State, personally appeared Thomas Gilcrease, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein named.

Witness my hand and official seal, this 24th day of August, 1909.

[SEAL.] A. B. DAVIS,
Notary Public.

My commission expires November 26, 1911.

Filed for record in Tulsa, Okla., Aug. 25, 1909, at 4 o'clock P. M.

[SEAL.] H. C. WALKLEY,
Register of Deeds.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, H. C. Walkley, Register of Deeds, in and for the county and State above named, do hereby certify that the foregoing is true and correct copy of a like instrument now of record in my office and recorded in Book 70, page 11.
Dated the 19 day of Feb. 1912.

H. C. WALKLEY,
Register of Deeds.

37 EXHIBIT "B."

Oil and Gas Mining Lease.

This agreement, made and entered into on the 4th day of September, 1909, by and between Lizzie Gilcrease, party of the first part, and Grant R. McCullough, party of the second part.
Witnesseth: That said party of the first part, for and in consideration of the sum of One ($1.00), and other good and valuable considerations, the receipt of which is hereby acknowledged and for the

further consideration of the rents, covenants and agreements hereinafter provided, has granted, demised, let and leased, and does by these presents, grant, demise, let and lease unto the party of the second part, his heirs, successors and assigns, all the oil and gas in and under the said tract of land hereinafter described, for the purpose and with the exclusive right of drilling and operating thereon for said oil and gas, both as to wells now opened and operated upon said land and as to all wells which may hereafter be drilled, opened and operated thereon, which said tract of land is situated in Tulsa county, State of Oklahoma, and described as follows, towit:

The South One-half (½) of the Northwest Quarter (¼) and the North One-half (½) of the southwest Quarter (¼) of Section Twenty-two (22), Township Seventeen (17) North Range twelve (12) East of the Indian Base and Meridian, containing One Hundred and Sixty (160) acres more or less.

The said party of the first part grants the further right and privilege unto the party of the second part, his heirs, successors
38 and assigns, of using sufficient water and gas from the premises necessary to the operation thereon, and all rights and privileges necessary or convenient for conducting said operations and the transportation of oil and gas, and the right to remove at any time, machinery or fixtures placed on the premises by the said party of the second part.

To have and to hold the same, unto the said party of the second part, his heirs, successors and assigns, for the term of fifteen (15) years, and as long thereafter as oil or gas is being produced therefrom by said party of the second part, his heirs, successors or assigns. The term of this lease to begin at the expiration or cancellation of a certain lease of said premises heretofore executed by William L. Gilcrease, as guardian of Thomas Gilcrease, to William H. Milliken, and the said terms of this lease shall run for Fifteen (15) years and as long thereafter as oil or gas is being produced as aforesaid.

The consideration named in a certain lease upon the aforesaid lands heretofore executed on the 24th day of August, 1909, by Thomas Gilcrease, to the said Grant R. McCullough, consisting of a bonus of Seventeen Thousand ($17,000.00) Dollars, and a royalty of one-eighth (⅛) of the oil to be produced from said land as a part of the consideration of this lease: And the said party of the first part, Lizzie Gilcrease, hereby adopts, ratifies and confirms the said lease from Thomas Gilcrease to the said Grant R. McCullough.
39 All conditions and terms of this grant and lease shall extend to and be binding upon the heirs, successors and assigns of the parties hereto.

In witness whereof, we have hereunto set our hands this 4th day of September, 1909.

LIZZIE GILCREASE,
Party of the First Part.
GRANT R. McCULLOUGH,
Party of the Second Part.

40 STATE OF OKLAHOMA,
County of Tulsa, ss:

On this 4th day of September, 1909, before me, a Notary Public in and for said county and State, personally appeared Lizzie Gilcrease to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed, for the uses and purposes therein named.

Witness my hand and official seal, this 4th day of September, 1909.
[SEAL.] C. W. GILLETT,
Notary Public.

My Commission expires April 12, 1912.

Filed for record at Tulsa, Okla., Sep. 7, 1909, at 10:50 o'clock, A. M.
[SEAL.] H. C. WALKLEY,
Register of Deeds.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, H. C. Walkley, Register of Deeds, in and for the county and State above named, do hereby certify that the foregoing is a true and correct copy of a like instrument now of record in my office and recorded in Book 70, page 168.
Dated the 14 day of Feb. 1912.
[SEAL.] H. C. WALKLEY,
Register of Deeds.

41 EXHIBIT "C."

Contract.

This contract, made and entered into on this 21st day of April, 1910, by and between Thomas Gilcrease, party of the first part and H. B. Martin, party of the second part.

Witnesseth: That this contract is made to take the place of and supersede a certain contract heretofore entered into on the 1st day of February, 1909, by and between Thomas Gilcrease and the firm of Hainer & Martin, and,

It is contracted and agreed that the said H. B. Martin will take charge of, and prosecute to the best of his skill and ability certain actions now pending as follows, to-wit:

A certain action in which the said Thomas Gilcrease is plaintiff and George C. Butte et al., are defendants now pending in the district court of Muskogee county, State of Oklahoma, and a certain other action in which the said Thomas Gilcrease is plaintiff and one William H. Millikin is defendant, now pending in the district court

of Tulsa county, State of Oklahoma. That in the said case of Gilcrease vs. Butte, that the compensation of the said H. B. Martin shall be 10% of whatever sum is recovered and collected in said cause whether by judgment of compromise, and that the said H. B. Martin, shall pay out of said commission his personal expenses in attending to said cause and that the compensation of the said
42 H. B. Martin for his services in the case of Gilcrease vs. Millikin, shall be 7 and ½ per cent of all sums of money collected from the said William H. Millikin and the other defendants in said cause, on account of the royalties for which said suit is prosecuted. And 7 and ½ per cent of all damages which may be recovered and collected in said cause.

It is further contracted and agreed that the said H. B. Martin shall represent the said Thomas Gilcrease in whatever litigation he may be a party for a period of one (1) year from the date of this contract, and that the compensation to be paid for such service shall be the reasonable value of the same to be agreed upon between the parties hereto at the time.

It is further agreed that a retainer fee of $200.00 the receipt whereof is hereby acknowledged, shall be and is paid by the said party of the first part to the party of the second part, and that such retainer fee covers all services to be rendered, consultation, advice, examination and abstracts, and preparations of deeds and other papers and all other services of a legal nature which may be required by the said party of the first part of the said party of the second part during the term of this contract, except the prosecution and defense of suits in court.

Provided, however, that the said H. B. Martin is to charge no commission upon such royalties as are admitted and paid without contest by the said William H. Millikin and —— Colley;
43 accruing upon said oil and gas lease from this date.

In witness whereof, we have hereunto set our hands this 21st day of April, 1910.

THOMAS GILCREASE,
Party of the First Part.
H. B. MARTIN,
Party of the Second Part.

44 EXHIBIT "D."

Contract.

This indenture, made and entered into this 8th day of February, 1911, by and between Thomas Gilcrease, G. R. McCullough and H. B. Martin,

Witnesseth:

That for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto contract and agree that the said Thomas Gilcrease, G. R. McCullough and H. B. Martin, their respective heirs, administrators and assigns, shall have and

hold, in the proportions hereinafter described, the exclusive right to mine oil and gas from and upon the premises hereinafter described, to-wit:

The South One-half (½) of the Northwest Quarter (¼) and the North One-half (½) of the Southwest Quarter (¼) of Section Twenty-two (22), Township Seventeen (17) North, Range Twelve (12) East of the Indian Meridian, in the county of Tulsa, and State of Oklahoma, as long as oil and gas, or either of them, are found upon said premises in paying quantities.

The said Thomas Gilcrease shall receive, as royalty for said leased premises, one-eighth (⅛) of all the oil mined and saved upon said premises, delivered in pipe line, and such royalty shall be paid at any time after the sale of such oil, upon demand of the said Thomas Gilcrease. And in addition to said royalty, the said Thomas Gilcrease, his heirs, executors and assigns, shall have and hold and undivided one-fourth (¼) of the leasehold interest in said property; the said G. R. McCullough, his heirs, administrators and assigns, shall have and hold an undivided one-half (½) of the leasehold interest in said land; and the said H. B. Martin, his heirs, administrators and assigns, shall have and hold an undivided one-fourth (¼) of the leasehold interest in said land.

And it is further contracted, covenanted and agreed that the parties hereto, their heirs, administrators and assigns, shall operate said lease for oil mining purposes from this date as long as oil and gas is found thereon in paying quantities, and that after the payment of the royalty hereinbefore provided for to the said Thomas Gilcrease, that all of the balance of the proceeds of the oil produced from said leased premises, less necessary operating expenses, shall be applied to the payment of the cost of equipment of said lease until such equipment shall have been fully paid for out of said proceeds.

And it is further contracted, covenanted and agreed that the equipment now upon said leased premises, and hereafter to be placed upon said leased premises, shall be and remain the personal property of the said Thomas Gilcrease, G. R. McCullough and H. B. Martin, their heirs, executors, and assigns, in the proportion of the interests of said parties in said leasehold, as evidenced by this contract.

And it is further covenanted, contracted and agreed that the said parties shall not remove any of said equipment, including powers, engines, tanks, lead pipes, houses, tubeing, rods, casings or any other portion of said equipment from any wells upon said leased premises, as long as oil is produced from said wells in paying quantities, but that when such wells shall become exhausted, and no longer produce oil in paying quantities, then such equipment may be removed by said parties hereto, their heirs, administrators and assigns.

And it is further covenanted and contracted that the expenses of operation of said leased premises for mining purposes shall be paid by the parties hereto in the proportion of their respective interests as hereinbefore described, except that the royalty interest of the said Thomas Gilcrease shall not be liable for any of the expense of the

equipment or operation of said lease, and shall be free from any expenses whatever.

In witness whereof, we have hereunto set our hands this 8th day of February, 1911.

THOMAS GILCREASE.
G. R. McCULLOUGH.
H. B. MARTIN.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Benjamin C. Connor, a Notary Public in and for said County and State, on this 8th day of February, 1911, personally appeared Thomas Gilcrease, G. R. McCullough, and H. B. Martin, to me known to be the identical persons who executed the foregoing instrument, and acknowledged to me, each for himself that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

[SEAL.] BENJAMIN C. CONNOR.

My commission expires March 29, 1911.

47 EXHIBIT "E."

Know all men by these presents:

That for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the undersigned, H. B. Martin has bargained, sold, released and assigned and does by these presents bargain, sell, release and assign unto Thomas Gilcrease, of Tulsa, Oklahoma, his heirs, administrators and assigns, an undivided three-fourths (¾) of all the rights, title and interest derived, had and held by the said H. B. Martin in and to the oil and gas mining right upon the following described real property, to-wit:

The South One-half (S./2) of the Northwest Quarter (N. W./4) and the North One-half (N./2) of the Southwest Quarter (S. W./4) of Section Twenty-two (22), Township Seventeen (17) North, Range Twelve (12) East of the Indian Meridian, in the county of Tulsa, and State of Oklahoma: under and by virtue of a certain contract of mining lease executed between the said Gilcrease, G. R. McCullough and the said H. B. Martin, on the 8th day of February, 1911, it being the intent of this assignment to convey to the said Thomas Gilcrease all rights, title, interest and privilege of the said H. B. Martin in the aforesaid contract of lease so far as the same affects the said undivided three-fourths interest of the said H. B. Martin.

It is further covenanted and contracted that the assignee, Thomas Gilcrease, assumes all obligations of the said H. B. Martin as
48 to the said three-fourths interest, as to the expense of operating and equipping said leased premises.

In witness whereof, I have hereunto set my hand, this 11th day of December, 1911.

(Signed) H. B. MARTIN.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Guy L. Reed, a Notary Public within and for said county and state, on this 11th day of December, 1911, personally appeared H. B. Martin, to me known to be the identical person who executed the above and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

[SEAL.] GUY L. REED,
Notary Public.

My commission expires Aug. 21, 1912.

49 EXHIBIT "F."

Assignment of Lease Contract.

Know all men by these presents: That I, H. B. Martin, of the city of Tulsa, Oklahoma, for and in consideration of the sum of One ($1.00) Dollar to me in hand paid the receipt whereof is hereby acknowledged, have bargained, sold, assigned, transferred and set over unto G. R. McCullough of Tulsa, Oklahoma, his heirs, executors, administrators and assigns, one-fourth (¼) of that part of the leasehold interest of the said H. B. Martin upon the following described real property, to-wit:

The South one-half (½) of the Northwest Quarter (¼) and the North One-half (½) of the Southwest Quarter (¼) of Section Twenty-two (22), Township Seventeen (17) North, Range Twelve (12) East of the Indian Meridian, in the county of Tulsa, State of Oklahoma evidenced by a certain written indenture made and entered into on the 8th day of February, 1911, by and between the said H. B. Martin, one G. R. McCullough, and one, Thomas Gilcrease; which said indenture appears of record in the office of the Register of Deeds of the county of Tulsa, State of Oklahoma, at page 538 in Record number 99 of said office.

To have and to hold unto him, the said G. R. McCullough, his heirs, administrators and assigns, according to the terms and subject to the obligations of the said written indenture of February 8th, 1911, aforesaid.

In witness whereof, I have hereunto set my hand this 23rd day of March, 1911.

H. B. MARTIN.

50 STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Roscoe Adams, a Notary Public in and for said county and State, on this 23 day of March, 1911, personally appeared H. B. Martin, to me known to be the identical person who executed the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

[SEAL.] ROSCOE ADAMS,
Notary Public.

My commission expires June 6, 1914.

Filed for record in Tulsa county, Oklahoma, on Nov. 27, 1911 at 11 A. M.

[SEAL.] H. C. WALKLEY,
Register of Deeds.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, H. C. Walkley, register of deeds, in and for the county and State above named, do hereby certify that the foregoing is a true and correct copy of a like instrument now of record in my office and recorded in Book 115, page 560.
Dated the 14 day of Feb. 1912.

[SEAL.] H. C. WALKLEY,
Register of Deeds.

51-86 Endorsements: 3125. Thomas Gilcrease v. G. R. McCullough et al. Petition. District Court, State of Oklahoma, County of Tulsa. Filed Feb. 14, 1912 at 3:32 P. M. W. W. Stuckey, District Clerk. P. C. West and Biddison & Campbell, Attorneys for Plaintiff.

* * * * * * *

87 STATE OF OKLAHOMA,
County of Tulsa, ss:

In the District Court.

No. —.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Separate Answer of Defendant H. B. Martin.

Comes now said defendant, H. B. Martin, leave of court first having been obtained, and for his separate answer to the petition of plaintiff filed in said cause, says and avers:

That he denies each and every allegation and averment in said petition contained except such as are hereinafter specifically admitted, explained or modified.

This answering defendant admits that the plaintiff is a citizen by blood of the Creek Nation or tribe of Indians, and has been enrolled on the tribal rolls of said nation made by the Dawes Commission to the Five Civilized Tribes, but defendant says that he is informed and believes and, therefore, avers the fact to be that said plain-
88 tiff was so enrolled as of the age of nine years on the 8th day of February 1899, and of one-eighth degree of Indian blood, opposite Roll Number 1505.

And answering defendant further admits that as such citizen or member of the Creek Nation or tribe of Indians, plaintiff was entitled to and received an allotment of the lands of the said Creek Nation consisting of 160 acres, including surplus and homestead, lying, situate and being as alleged in plaintiff's petition, and that said lands were, on or about the 25th day of August, 1902, duly patented and conveyed to the plaintiff by the said Creek Nation.

And answering defendant admits that the defendant-, G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown are each and all citizens of the State of Oklahoma and residents of the city of Tulsa and county of Tulsa in said State. That the defendant, G. R. McCullough is president of the First National Bank of Tulsa, Oklahoma, and A. E. Bradshaw is cashier of said bank; and that before the connection of the said G. R. McCullough and A. E. Bradshaw with said First National Bank, they were each stockholders and officers of the Bank of Oklahoma; and that the defendant, H. B. Martin, is an attorney at law and practicing at the city of Tulsa in the State of Oklahoma for the past four years, and has at various times and in divers cases represented, in his professional capacity, the Bank of Oklahoma and the First National Bank of Tulsa.

And answering defendant admits that the Bank of Oklahoma nationalized in the year 1911, that is, became a national bank.

89 And answering defendant admits that the aforesaid land allotted to the plaintiff is situated in the oil field which is commonly known as Glenn Pool, and is underlaid with large and valuable deposits of petroleum.

And answering defendant admits that in the month of September, 1906, the plaintiff, through his guardian, one William L. Gilcrease, entered into a departmental oil and gas mining lease with one W. H. Milliken, embracing the land hereinbefore described, and that Milliken proceeded to develop the same for oil and drilled upon said land between the fall of 1906 and the summer of 1909, some forty-nine wells. That in August, of 1909 about forty-two of said wells were producing oil, but whether said wells were producing at said time more than twenty-five thousand barrels of oil per month, as alleged in plaintiff's petition, this answering defendant is not informed and neither admits nor denies.

And answering defendant admits that before the 24th day of August, 1909, and on said date, this defendant was a member of the law firm of B. T. Hainer and H. B. Martin, engaged in the general practice of law under the firm name and style of Hainer & Martin, at the city of Tulsa aforesaid, and avers that said firm was on said date the regularly employed and acting counsel of the plaintiff in certain litigation in which the plaintiff was at that time involved, included in which litigation was a certain suit then pending in this court wherein the said plaintiff was plaintiff and one W. H. Milliken and W. E. Colley were defendants, which said suit was

90 prosecuted to cancel the oil and gas mining lease theretofore executed by the guardian of plaintiff to the said Milliken and Colley upon the said land, and for an accounting of the royalties upon the profits of said lease.

And answering defendant admits that the plaintiff, on or about the 24th day of August, 1909, made, executed and delivered to the defendant, G. R. McCullough, the oil and gas mining lease exhibited in plaintiff's petition as Exhibit A, and that on or about the 18th day of September, 1908, the plaintiff had executed a warranty deed, conveying said lands to his mother, Lizzie Gilcrease, which deed was recorded in the office of the Register of Deeds in Record Book 33, at page 529, and that the said Lizzie Gilcrease, on or about September 4, 1909, executed to the defendant, G. R. McCullough, the oil and gas mining lease exhibited in plaintiff's petition as Exhibit B, and admits that on or about the 21st day of April, 1910, the plaintiff and this defendant executed the written contract exhibited in plaintiff's petition as Exhibit C.

This answering defendant admits that at the time of the execution of said contract, Exhibit C, this defendant was still a member of the law firm of Hainer & Martin, and that said contract was entered into by this defendant in his individual name, but avers that such was done at the request of the plaintiff with the knowledge and consent of this defendant's partner, B. T. Hainer, and because of the plaintiff's personal unfriendliness to this defendant's partner, this an-

swering defendant at the time agreeing with his said partner
91 to compensate him for his interest in all of this defendant's time that should be occupied with the business and affairs of the plaintiff, which said agreement was at the time well known to the plaintiff and by him fully acquiesced in and consented to.

And answering defendant admits that on or about the 22nd day of October, 1910, the defendant, G. R. McCullough, sold and transferred to the plaintiff a one-fourth interest in the leases theretofore executed by the plaintiff and his mother Lizzie Gilcrease, to the said McCullough, and sold and transferred to this defendant a one-fourth interest in said leases. That previous to the 22nd day of October, 1910, the defendant, G. R. McCullough, had paid to the plaintiff the sum of $4,000.00 of the original bonus by him agreed to be paid for the leases theretofore executed to the said McCullough by the said Gilcrease and his mother, Lizzie Gilcrease, according to the terms of the contract between the said plaintiff and the said McCullough. That there remained of the said original bonus so agreed to be paid, the sum of $13,000.00, which was still unpaid by the said McCullough to the said Gilcrease, but avers that no part of said sum was at said time due.

And answering defendant admits that on or about the said 22nd day of October, 1910, the plaintiff surrendered to the defendant, G. R. McCullough, as part consideration of the purchase by the plaintiff of the sum of $13,000.00, and paid to the said McCullough an additional sum of $2,000.00, aggregating the sum of $15,-
92 000.00, the price agreed upon between the plaintiff and the defendant, McCullough as the purchase price of said interest.

And defendant admits that on the 8th day of February, 1911, the lease theretofore held upon said lands by the said William H. Milliken and his associated expired, and that the plaintiff, this defendant and the defendant G. R. McCullough, on said 8th day of February, 1911, made, executed and delivered, mutually, the written contract exhibited in plaintiff's petition as exhibit D; and that on the 11th day of December, 1911, this defendant made, executed and delivered to the plaintiff an assignment of three-fourths of the interest of this defendant in the said contract exhibited in plaintiff's petition as Exhibit D, by the written instrument exhibited in plaintiff's petition as Exhibit F; and this defendant admits that theretofore this defendant had executed to the defendant, G. R. McCullough, an assignment of one-fourth of the interest of this defendant in said contract, exhibited in plaintiff's petition as Exhibit D; but this answering defendant says that the said assignment to the said G. R. McCullough was executed and delivered by this defendant as security for the payment of certain indebtedness at the time due from this defendant to the defendant, G. R. McCullough, and to the First National Bank of Tulsa, Oklahoma, of which the said McCullough was at the time president, and that said assignment was not intended as a conveyance or transfer of said interest except as security, as aforesaid.

93 And answering defendant admits that on or about the 11th day of December, 1911, the plaintiff sold, assigned, endorsed

and transferred to this defendant a certain promissory note for the sum of $3000.00 executed by one George W. Rose to the said plaintiff, and secured by real estate mortgage, and also a promissory note executed by S. C. Maxey and wife to the plaintiff for the sum of $1500.00, and executed to this defendant deeds of conveyance for the following described real estate situated in Tulsa and Osage Counties, in the State of Oklahoma, to-wit:

The South 50 ft. of Lot 4, Block 183; East 37½ ft. of Lot 7, Block 1 of Bliss Addition; Lot 1, Block 2 of Brennan-Reed Addition; Lot 8 Block 1 of Brennan-Reed Addition; Lots 6, 7, 8, 9, 10 and 11 in Block 3 of North Moreland Addition to the city of Tulsa, Tulsa County, Oklahoma; and the Southeast Quarter of Section 25, Township 17 North, Range 12 East in Tulsa County, Oklahoma; the Northwest Quarter of Section 17, Township 20 North, Range 12 East, and the Southwest Quarter of the Southwest Quarter of Section 20, Township 20 North, Range 12 East, Osage County, Oklahoma.

And defendant further answering, says that the plaintiff, Thomas Gilcrease, was not a person without education, business judgment and ability, as alleged in his petition, at any of the times mentioned therein, but that on the contrary the said plaintiff is well educated and has been accustomed to transact business of an important nature for several years before any of the times mentioned in
94 plaintiff's petition. That plaintiff has heretofore conducted a store under his own management. That in February, 1909, the plaintiff, being a resident of the county of Wagoner and State of Oklahoma, duly filed his petition in the District Court of said county of Wagoner, State of Oklahoma, for the purpose of obtaining the decree and judgment of that court conferring upon the plaintiff his rights of majority and removing his disabilities of non-age; that due and legal service was had upon said application and that said court having jurisdiction of the plaintiff and of the subject-matter of his said petition, heard evidence as to the competency and business capacity of the plaintiff, and found and adjudged that the plaintiff was capable of transacting properly his own business and affairs, and rendered its judgment and decree granting plaintiff's said application and conferring upon him full right and authority to transact all business with the same effect as if he had reached the age of twenty-one years. That upon the rendering of said judgment and decree, the county court of Muskogee county, Oklahoma, in which a guardian had theretofore been appointed for the person and estate of the plaintiff, discharged said guardian and caused plaintiff's property to be delivered over into his own hands and that plaintiff thereupon, on or about the — day of February, 1909, assumed the control of all of his business affairs and has ever since conducted his business by his own efforts successfully.

95 And defendant says that prior to the execution of the oil and gas mining lease made by the plaintiff to the defendant, G. R. McCullough, on the 24th day of August, 1909, exhibited in plaintiff's petition as Exhibit A., this defendant had no acquaint-

ance of any character, no business or social relations with either the defendant A. E. Bradshaw or Al Brown. That this defendant was not consulted by the plaintiff as to the propriety or advisability of executing said lease and was not made aware of any intention on the part of the plaintiff to execute the same, and was not informed of any negotiations pending between the plaintiff and the defendants, McCullough, Bradshaw or Brown, until this defendant was directed by the plaintiff to write said lease on the 24th day of August, 1909, and informed that a contract had been made between the plaintiff and the defendant McCullough, for the execution of said lease; and defendant says that on said occasion he was not consulted by the plaintiff or by any one else as to the advisability of executing said lease. That the plaintiff did on said occasion ask the opinion of this defendant as to whether or not he could execute a valid oil and gas mining lease upon his lands, and defendant says that it was the opinion of this defendant that such a lease, if executed, would be valid, and that he so advised the plaintiff.

And defendant says that at the time and before the execution of said lease, he was not retained or employed by the plaintiff to advise him with reference to any of his business or transactions except as to the legal questions arising therein; that his acquaintance
96 with the plaintiff at that time was very limited, and his business relations with him did not extend beyond legal services which he performed for the plaintiff when called upon so to do.

And defendant says further that he had no communication with the defendant, G. R. McCullough, with reference to the execution of said lease before the same was executed except on the occasion when said instrument of lease was written in this defendant's office, and that all communications between this defendant and the defendant McCullough on said occasion were in the immediate hearing and presence of the plaintiff.

And defendant further says that at the time of the execution of said lease exhibited as aforesaid, in plaintiff's petition as Exhibit A., this defendant had no intimate knowledge of the value of said property, no experience in the oil mining business and very little knowledge thereof, all of which facts were well known to the plaintiff. But defendant avers that said oil and gas mining lease last above referred to was not at the time of its execution of the market value of more than $17,000.00 bonus. That the plaintiff had, before executing said lease to the defendant, McCullough, negotiated in the oil and gas mining lease market at and about the city of Tulsa for a long time endeavoring to effect a sale of said lease for the sum of $10,000.00, but was unable to find a sale thereof at said price until he succeeded in selling the same to the defendants, McCullough and Bradshaw. That because of the risks and uncertainties and hazards of the oil and gas mining business and the long period of
97 time it would be before the lessee could come into possession of said property, said lease at the time of its execution on the 24th day of August, 1909, was not worth to exceed $10,000.00 bonus.

And defendant says that several days after the execution of said oil and gas mining lease as aforesaid, this defendant was advised by

the plaintiff and the defendant, McCullough, that the plaintiff had theretofore on the 18th day of September, 1909, conveyed by deed of general warranty, his title to the lands covered by said lease to his mother, Lizzie Gilcrease, and that said deed had been duly recorded in the office of the Register of Deeds of the county of Tulsa, Oklahoma. That this defendant was directed by the plaintiff to prepare an oil and gas mining lease running from the said Lizzie Gilcrease to the defendant McCullough, which this defendant did. That at the direction of the plaintiff said lease was submitted to the said Lizzie Gilcrease for her execution, and after consultation between the said Lizzie Gilcrease and the plaintiff with respect to the execution of said lease, the said Lizzie Gilcrease made, executed and delivered to the defendant, McCullough, on the 4th day of September, 1909, the oil and gas mining lease exhibited in plaintiff's petition as exhibit B. That said instrument was executed by the said Lizzie Gilcrease who is a woman of education and experience and business judgment, after full consultation and advice between her, her husband and the plaintiff, and with full knowledge of all the facts surrounding said transaction including the value and condition of said leased premises.

98 And defendant further says that the defendant, A. E. Bradshaw, was not appointed the guardian of the plaintiff by the procurement of this defendant as alleged in plaintiff's petition, but that said Bradshaw was selected by the plaintiff himself to be appointed as special guardian merely for the purpose of facilitating the collection of certain moneys due to the plaintiff and then in the hands of the U. S. Indian Superintendent at Muskogee, Oklahoma. That the only authority given the said Bradshaw by the order of his appointment in the county court of Tulsa county, Oklahoma, was to collect said funds, and that immediately upon the collection of said funds, they were paid over upon the request of the plaintiff and the order of the county court aforesaid to the plaintiff in person or according to his directions and order.

And answering defendant says that the said pretended appointment of the said A. E. Bradshaw as guardian aforesaid was wholly without jurisdiction for the reason that theretofore in a proceeding pending in the county court of Muskogee county, Oklahoma, the court at the time having jurisdiction of the plaintiff and his estate, a guardian had been duly and regularly appointed for the person and estate of plaintiff, and that said proceedings and cause had not been transferred from the said county court of Muskogee county but remained therein, and that the county court of Tulsa county had no jurisdiction in the premises. That the only purpose and effect of the pretended appointment of the said A. E. Bradshaw as guardian as aforesaid was to induce the U. S. Indian Superintendent to pay over the funds in his hands to which the plaint-

99 iff was entitled so that the plaintiff might receive and enjoy the same. And defendant says that all the acts on his part performed in connection with said guardianship were performed in good faith and in behalf of the plaintiff for the purpose of collecting the funds belonging to the plaintiff for his benefit. That this

defendant's law firm received compensation for said services in accordance with the contract and agreements made with the plaintiff for the reasonable value of the services rendered in his behalf.

And the defendant says that after the execution of the leases exhibited in plaintiff's petition as Exhibits A and B aforesaid, about the 10th day of July, 1910, the Supreme Court of the State of Oklahoma, in a certain cause pending in said court, entitled Jefferson vs. Winkler, decided, in substance, that a married minor Creek Indian allottee could not, under the acts of Congress in force at the time and the laws of the State of Oklahoma, execute a valid alienation of the title to his allotment. Defendant says that the rule of law laid down and declared in said opinion was contrary to what this defendant had theretofore understood the law to be. That as soon as this defendant learned of said decision he advised the plaintiff of the same and procured a copy of said opinion which the plaintiff read, and this defendant thereupon advised the plaintiff of what this defendant believed the effect of said opinion had upon the validity of the leases theretofore executed to the defendant, McCullough, and that it was probable, in the light of said opinion, that said leases might be avoided. And defendant says that it is not true but false that the plaintiff demanded of the defend-
100 ant McCullough the release of the contracts and agreements theretofore entered into by the plaintiff and said defendant, but that, on the contrary, the plaintiff when advised of the situation of said contracts with reference to the law as it had been declared by the Supreme Court of Oklahoma, reaffirmed said contracts, stating that he was perfectly satisfied with them; that he had been paid all said lease was worth at the time of his previous transactions with the defendant McCullough; that he desired to carry out his said contracts in good faith and did not wish to adopt a course of repudiation or dishonesty. And defendant says that pursuant to said purpose so declared on the part of said plaintiff, plaintiff began negotiations with the defendant, McCullough, to purchase an interest in said contract and requested this defendant to join him in said purchase. And defendant says that he at the time advised the plaintiff that he did not have sufficient available means to purchase said interest and that he did not wish to do so. That the plaintiff insisted that this defendant purchase an interest from the defendant, McCullough, and offered to assist this defendant to obtain sufficient funds for such purpose; and defendant says that upon the urgent request of the plaintiff, this defendant consented to and did purchase from the defendant McCullough a one-fourth interest in the rights of the said defendant McCullough under the leases theretofore executed by the plaintiff and the plaintiff's mother, Lizzie Gilcrease, to the said McCullough, for the agreed consideration of $15,000.00. Defendant says that at the same time, or about the same time, this defendant purchased said interest, the
101 plaintiff also purchased from the defendant, McCullough, a one-fourth interest in the rights of the defendant, McCullough, under said leases, for the consideration of $15,000.00. That the plaintiff paid for said interest by surrendering to the defendant,

McCullough, the agreement on his part to pay to the said plaintiff $13,000.00 of the original bonus agreed to be paid by the defendant, McCullough, to the plaintiff for the execution of said leases, and by paying to the said McCullough $2,000.00 in cash. At the time of said transaction, this defendant was obliged to borrow and did borrow from the defendant, McCullough, and others, a large part of the funds with which said purchase was made on the part of this defendant. That all of said facts were well known to the plaintiff at the time and were made and done with his full knowledge, consent and concurrence, and, indeed, at his special instance and request.

And defendant says that in none of the transaction- aforesaid, or any of the matters entering into the same, was there any deception, fraud or conspiracy practiced upon or against the said plaintiff by this defendant or any of his co-defendants, but that all of said transactions were conducted in good faith, fairly and with the full knowledge of the plaintiff therein.

Defendant further says that on the 8th day of February, 1911, the lease upon the plaintiff's said lands under which the said William M. Milliken and his accociates had mined and operated said lands for oil, expired; that under the terms of said lease,
102 the said Milliken was entitled to take away the derricks, lead lines, tubing, rods, engines, powers and all the equipment for mining purposes then upon the said premises, except the casing in the wells, and was entitled to remove the casing from such wells as had ceased to produce oil in paying quantities. That under the terms of the said lease, the said Milliken had sixty days from the expiration thereof in which to remove said mining equipment. That it required an investment and expenditure, in order to purchase proper equipment to continue the operation upon said premises of mining oil, of a large sum of money, to-wit: about $40,000.00. That it was also necessary to devise some means of preventing an interruption of the operations of said wells for the reason that if they were permitted to stand idle for any considerable period, the water would flow in upon the oil *said* in said wells and totally destroy their productiveness and value. And defendant says that the plaintiff had no personal experience in oil and gas mining operations and no money or credit with which to provide the necessary equipment of said premises for oil and gas mining purposes and preserve the same from being injured and destroyed for want of operation. The plaintiff was desirous of engaging in the operation of the open mines upon said land and did not wish to sell the same or sell the leasehold interest therein. The plaintiff thereupon proposed on or about the 8th day of February, 1911, to this defendant and the defendants, G. R. McCullough, and A. E. Bradshaw, to enter into a contract of partnership for the purpose of equipping said premises for oil and gas mining purposes and operating
103 the same so long as oil and gas or either of them might be found upon said premises. It was thereupon agreed between the plaintiff and this defendant and the defendants McCullough and Bradshaw, that said parties, their heirs, representatives or assigns,

would purchase the necessary equipment aforesaid and provide the necessary means for operating the open mines upon said premises and continue the operation thereon so long as oil and gas or either of them should be found in paying quantities, sharing the profits and losses of said enterprise. That the plaintiff should receive as royalty free from all expenses, for the use of said mines, one-eighth of all the oil and gas produced from said mines and that the shares of said parties in said business and its profits should be: G. R. McCullough, one-half; the plaintiff one-fourth; and this defendant the remaining one-fourth. Pursuant to said understanding and arrangement so entered into, the plaintiff and the defendant, G. R. McCullough and this defendant, for the mutual considerations of giving their credit, money, attention and time to the conduct of said business, made, executed and mutually delivered their certain contract of partnership in writing, a copy of which is exhibited in plaintiff's petition as Exhibit D.

Defendant says that it was understood at the time between the plaintiff and the defendant, McCullough, and this defendant, that the defendant, Bradshaw, would receive an assignment of a part of the interest of the defendant, McCullough, in said partnership contract, but that this defendant was not informed as to what share the said Bradshaw would receive. It was, however, agreed
104 between the parties to said contract referred to as Exhibit D., that the said Bradshaw would participate in the conduct and operation of said mining business. And defendant says that the plaintiff, at the time of the execution of said partnership contract, was twenty-one years of age and of more than average intelligence, and of at least three years active successful experience in business. That the plaintiff was fully advised of the value of his said lands and the mines thereon, of the necessary cost of equipping the same for operation, and of the probable profits of such operation, and that the plaintiff was also aware of all laws and statutes and decisions of the courts bearing upon his right, title and interest in said lands and his contracts in relation thereto.

And defendant says that pursuant to the terms of the aforesaid contract of partnership, this defendant, the defendant McCullough and the plaintiff purchased of divers persons equipment consisting of miscellaneous equipment in the sum of $23,387.94. buildings and houses for workmen at a cost of $900.13; rigs and derricks for oil wells, $4084.21; pipelines $5629.05; tanks $2490.00; tools $29.35; supplies $456.57; pumping $2897.22; supervision $2295.96; pulling and cleaning wells $2707.83; general labor $5153.48; general expense $365.18; freight and express $249.64; telegrams expense $81.60; team and livery hire $3106.45; use of tools and repairs $626.57; an aggregate expense of $—. That they entered upon the possession of said premises and proceeds in the mining operation thereon; that owing to the diligent, careful and competent care and attention to said mines given by the plaintiff and the said
105 defendants, they were greatly improved in their production and value; and that the productive capacity of said mines was increased from about 290 barrels per day to more than 500 barrels

per day; that the value of said property was thereby greatly enhanced so that said mines with the equipment provided as aforesaid for the same, are now more than quadrupled in value.

And the defendant says that he is informed and believes and, therefore, avers the fact to be, that the defendant, McCullough, has agreed to transfer to the defendant, A. E. Bradshaw, three-eighths of his interest in said contract of partnership, and to the defendant, Brown, two-eighths of the same; but that no actual transfer of said interests has as yet been made.

And defendant says that the conduct of said business has produced large profits of which the plaintiff has from time to time, both before and since the commencement of this action, taken his share under the terms of said partnership contract. That the plaintiff has received from time to time all the benefits of said contract accruing to him with full and complete knowledge of all the facts relating thereto, and defendant says that plaintiff ought to be and is, in equity, estopped to deny the validity of said partnership contract for any cause whatever.

And defendant says that on or about the 27th day of June, 1911, when it was ascertained that the mining interests acquired by this defendant were about to become profitable, this de-
106 fendant's partner, Judge B. T. Hainer, called upon this defendant for compensation according to the terms of the contract theretofore made between this defendant and his said partner for the time taken out of the partnership business by this defendant in attention to the mining interests in which he was engaged with the plaintiff, including the interest hereinbefore described.

Defendant says that he informed the plaintiff of the said demand and discussed with the plaintiff the matter as to what would be reasonable compensation under the circumstances, and advised the plaintiff that this defendant's said partner claimed an interest in the mining interests acquired by this defendant; that it was after full consideration and discussion between the plaintiff and this defendant that Judge Hainer and this defendant finally agreed that $12,500.00 would be a fair compensation for this defendant to pay to his partner upon said account. That pursuant to said understanding, it was agreed, with the knowledge and consent of the plaintiff, between this defendant and his partner, Judge Hainer, that this defendant would pay on said account the sum of $12,500.00; and defendant says that pursuant to said agreement and understanding and with the full knowledge, consent and concurrence of the plaintiff, this defendant did pay to H. T. Hainer, on or about the 27th day of June, 1911, the full sum of $12,500.00 in satisfaction and discharge of said claim and account.

And defendant says that thereafter, on or about the 11th day of December, 1911, the plaintiff proposed to this defendant a
107 settlement of the accounts and transactions between the plaintiff and this defendant, and proposed to this defendant that he purchase from this defendant three-fourths of this defendant's interest in said partnership contract. And defendant says that at said time the plaintiff was indebted to this defendant upon several

accounts for services as plaintiff's attorney, for moneys advanced to plaintiff and for him at his request, in about the sum of $5,000.00, the exact amount of which indebtedness this defendant does not know and cannot now specifically state. That this defendant was indebted to the plaintiff upon various accounts the exact amount of which this defendant does not know and cannot definitely state, in about the sum of $6,500.00. That the plaintiff proposed to this defendant in settlement of all the open accounts and mutual indebtedness existing between them, to take a transfer from this defendant of three-fourths of his interest in the aforesaid partnership contract, one-half of this defendant's holdings in the capital stock of the Rogan Oil Company, and one-half of this defendant's holdings in the capital stock of the Waterside Oil & Gas Company, a corporation, and convey to this defendant the following described real property, to-wit:

The South 50 ft. of Lot 4, Block 183; East 37½ ft. of Lot 7 in block 1 of Bliss Addition; Lot 1, Block 2 of Brennan-Reed Addition; Lot 8 Block 1 of Brennan-Reed Addition; Lots 6, 7, 8, 9, 10 and 11 in block 3 of North Moreland Addition to the city of Tulsa, Tulsa county Oklahoma; and the Southeast Quarter of Section 25, Township 17 North, Range 12 East in Tulsa county,
108 Oklahoma; the Northwest Quarter of Section 17, Township 20 North, Range 12 East; and the Southwest Quarter of the Southwest Quarter of Section 20, Township 20 North, Range 12 East, Osage county, Oklahoma;

and to endorse to this defendant the note of George W. Rose for $3,000.00 hereinbefore described, and the note of S. C. Maxey for $1,500.00 hereinbefore described, and to turn over to this defendant a one-half interest in a certain horse called Nick, which at the time belonged to the plaintiff and this defendant as partners, one milk cow, and certain hogs the number of which was unknown but which were owned and kept by the plaintiff upon his wife's farm in Osage county, and a certain electric automobile.

After consideration of this proposition made by the plaintiff to this defendant, this defendant accepted the same, and pursuant to said contract, all of the aforesaid property was conveyed and transferred, the plaintiff and this defendant mutually executing receipts against the indebtedness of each to the other.

And defendant says that the aforesaid stock in the Rogan Oil Company, at the time of the transfer by this defendant to the plaintiff was and is of the reasonable value of $5,000.00, and the capital stock of the Waterside Oil & Gas Company, transferred in said settlement by this defendant to the plaintiff, was and is of the reasonable value of $1,000.00. That the other property transferred
109 and delivered to the said plaintiff by this defendant in said settlement was of the aggregate and reasonable value of about $35,000.00. That all of the property received in said settlement by this defendant from the plaintiff, including the credits received therein, did not exceed the value of $30,000.00.

That all of the aforesaid transactions had between this defendant and the plaintiff have resulted in a loss to this defendant instead of a profit.

And the defendant, for further answer says, and avers, that on the 12th day of February, 1912, after the plaintiff had caused to be dictated his petition in this cause, and was about to file the same in this court, the plaintiff brought to this defendant a Mr. W. A. Branson and a Mr. Henry Payne, who were in the business of selling and planting trees and shrub-ery, and stated to Mr. Branson and Mr. Payne in the presence of this defendant, that this defendant owned the property where the plaintiff then and now resides, a portion of the property conveyed by the plaintiff to the defendant on the 11th day of December, 1911, as aforesaid, and advised this defendant to contract with the said Branson and Payne to have some trees transplanted upon said property, and this defendant says that acting upon said advice, he contracted with the said Branson and Payne to transplant said trees, at an expense of $55.00, which work was duly performed by the said Branson and Payne and for which this defendant was obliged to and did pay the sum of $55.00. And defendant says that the plaintiff ought to be and is estopped
110 in equity by his said conduct, from denying the plaintiff's title in and to said property.

And defendant says that with the knowledge and consent of the plaintiff he has paid the taxes due and becoming due on all of said real property conveyed by the plaintiff to this defendant as aforesaid.

And the defendant says that the plaintiff has ever since the 11th day of December, 1911, taken, appropriated and enjoyed all the profits arising from the oil interests conveyed by this defendant to the plaintiff at said time, and continues to appropriate and enjoy said profits, to the present time, and that the plaintiff has received therefrom a large sum of money, to-wit: more than $5,000.00, and that the plaintiff ought to be and is estopped in equity to deny the validity of said settlement.

Wherefore, the premises considered, this defendant prays that the plaintiff take nothing by this action, that this defendant recover his costs and all other and further relief to which he may be in equity and good conscience entitled.

STUART, CRUCE & GILBERT,
MARTIN, BUSH & MURRY,
Attorneys for Defendant H. B. Martin.

111 Endorsements: No. 3125. District Court. Thomas Gilcrease vs. G. R. McCullough et al. Separate Answer of H. B. Martin. District Court State of Oklahoma County of Tulsa. Filed Jun- 15, 1912. W. W. Stuckey, District Clerk.

112 And thereupon on the same day, to-wit, the 15th day of June, 1912, there was filed the Separate Answer of the defendant G. R. McCullough.

Which said separate answer is in the words and figures following, to-wit:

113 STATE OF OKLAHOMA,
County of Tulsa, ss:

In the District Court.

No. —.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Separate Answer of Defendant G. R. McCullough.

Comes now said defendant, G. R. McCullough, leave of court first having been obtained, and for his separate answer to the petition of plaintiff filed in said cause, says and avers:

That he denies each and every allegation and averment in said petition contained except such as are hereinafter specifically admitted, explained or modified.

This answering defendant admits that the plaintiff is a citizen by blood of the Creek Nation or tribe of Indians, and has been enrolled on the tribal rolls of said nation made by the Dawes Commission to the Five Civilized Tribes, but defendant says that he
114 is informed and believes and, therefore avers the facts to be that said plaintiff was so enrolled as of the age of nine years on the 8th day of February, 1899, and of one-eighth degree of Indian blood, opposite Roll Number 1505.

And answering defendant further admits that as such citizen or member of the Creek Nation or tribe of Indians, plaintiff was entitled to and received an allotment of the lands of the said Creek Nation consisting of 160 acres, including surplus and homestead, lying, situate and being as alleged in plaintiff's petition, and that said lands were, on or about the 25th of August, 1902, duly patented and conveyed to the plaintiff by the said Creek Nation.

And answering defendant admits that the defendants, G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown, are each and all citizens of the State of Oklahoma and residents of the city of Tulsa and county of Tulsa in said State. That this defendant is president of the First National Bank of Tulsa, Oklahoma, and A. E. Bradshaw is cashier of said bank; and that before the connection of this defendant and A. E. Bradshaw with said First National Bank, they were each stockholders and officers of the Bank of Oklahoma; and that the defendant, H. B. Martin, is an attorney at law and practicing at the city of Tulsa in the State of Oklahoma for the past four years, and has at various times and in divers cases

represented in his professional capacity, the Bank of Oklahoma and the First National Bank of Tulsa.

115 And answering defendant admits that the Bank of Oklahoma nationalized in the year 1911, that is, became a national bank.

And answering defendant admits that the aforesaid land allotted to the plaintiff is situated in the oil field which is commonly known as Glenn Pool, and is underlaid with large and valuable deposits of petroleum.

And answering defendant admits that in the month of September, 1906, the plaintiff, through his guardian, one William L. Gilcrease, entered into a departmental oil and gas mining lease with one W. H. Millikin, embracing the land hereinbefore described, and that Millikin proceeded to develop the same for oil and drilled upon said land between the fall of 1906 and the summer of 1909, some forty-nine wells. That in August of 1909 about forty-two of said wells were producing oil but whether said wells were producing at said time more than twenty-five thousand barrels of oil per month, as alleged in plaintiff's petition, this answering defendant is not informed and neither admits nor denies.

And answering defendants admit that the plaintiff, on or about the 24th day of August, 1909, made, executed and delivered to this defendant the oil and gas mining lease exhibited in plaintiff's petition as Exhibit A., and that on or about the 18th day of September, 1908, the plaintiff had executed a warranty deed, conveying said lands to his mother, Lizzie Gilcrease, which deed was recorded

116 in the office of the Register of Deeds in Record Book 33 at Page 529, and that the said Lizzie Gilcrease, on or about September 4, 1909, executed to this defendant, G. R. McCullough, the oil and gas mining lease exhibited in plaintiff's petition as Exhibit B, and admits that on or about the 21st day of April, 1910, the plaintiff and the defendant, H. B. Martin, executed the written contract exhibited in plaintiff's petition as Exhibit C.

And answering defendant admits that on or about the 22nd day of October, 1910, this defendant sold and transferred to the plaintiff a one-fourth interest in the leases theretofore executed by the plaintiff and his mother, Lizzie Gilcrease, to the said defendant, and sold and transferred to the defendant, H. B. Martin, a one-fourth interest in said leases. That previous to the said 22nd day of October, 1910, this defendant had paid to the plaintiff the sum of $4,000.00 of the original bonus by him agreed to be paid for the leases theretofore executed to this defendant by the said Gilcrease and his mother, Lizzie Gilcrease, according to the terms of the contract between the said plaintiff and this defendant. That there remained of the said original bonus so agreed to be paid, the sum of $13,000.00, which was still unpaid by this defendant to the said Gilcrease, but avers that no part of said sum was at said time due.

And answering defendant admits that on or about the said 22nd day of October, 1910, the plaintiff surrendered to this defendant, as part consideration of the purchase by the plaintiff on said date of

117 a one-fourth interest in said leases, the said obligation of this defendant to the plaintiff of the sum of $13,000.00, and paid to this defendant an additional sum of $2,000.00, aggregating the sum of $15,000.00, the price agreed upon between the plaintiff and this defendant as the purchase price of said interest.

And defendant admits that on the 8th day of February, 1911, the lease theretofore held upon said lands by the said William H. Milliken and his associates expired, and that the plaintiff, this defendant and the defendant, H. B. Martin, on said 8th day of February, 1911, made, executed and delivered, mutually, the written contract exhibited in plaintiff's petition as Exhibit D; and that on the 11th day of December, 1911, the defendant, H. B. Martin, made, executed and delivered to the plaintiff an assignment of three-fourths of the interest of said defendant under the said contract exhibited in plaintiff's petition as Exhibit D, by the written instrument exhibited in plaintiff's petition as Exhibit F; and this defendant admits that theretofore the defendant H. B. Martin had executed to this defendant an assignment of one-fourth of the interest of said defendant Martin in said contract, exhibited in plaintiff's petition as Exhibit D; but this answering defendant says that the said assignment to this defendant was executed and delivered by the said defendant, H. B. Martin, as security for the payment of certain indebtedness at the time due from said defendant H. B. Martin to this defendant and to the First National Bank of Tulsa, Oklahoma of which this defendant was at the time president, and that said assignment was not

118 intended as a conveyance or transfer of said interest except as security, as aforesaid.

And defendant, further answering, says that the plaintiff, Thomas Gilcrease, was not a person without education business judgment and ability, as alleged in his petition, at any of the times mentioned therein, but that on the contrary the said plaintiff is well educated and has been accustomed to transact business of an important nature for several years before any of the times mentioned in plaintiff's petition. That plaintiff had theretofore conducted a store under his own management. That in February, 1909, the plaintiff, being a resident of the county of Wagoner, State of Oklahoma, for the purpose of obtaining the decree and judgment of that court, conferring upon the plaintiff his rights of majority and removing his disabilities of non-age; that due and legal service was had upon said application and that said court having jurisdiction of the plaintiff and of the subject matter of his said petition, heard evidence as to the competency and business capacity of the plaintiff, and found and adjudged that the plaintiff was capable of transacting properly his own business and affairs, and rendered its judgment and decree granting plaintiff's said application and conferring upon him full right and authority to transact all business with the same effect as if he had reached the age of twenty-one years. That upon the rendering of said judgment and decree, the county court of Muskogee county, Oklahoma, in which a guardian had theretofore been appointed for the person and estate of the plaintiff, discharged said guard-

119 ian and caused plaintiff's property to be delivered over into his own hands and that plaintiff thereupon, on or about the — day of February, 1909, assumed the control of all of his business affairs and has ever since conducted his business by his own efforts successfully.

And this defendant especially denies that prior to the execution of the oil and gas mining lease made by plaintiff to this defendant on the 24th day of August, 1909, exhibited in plaintiff's petition as Exhibit A., or at any other time, that any conspiracy, confederation, understanding or agreement of any kind was made between this defendant and his co-defendant, H. B. Martin, on the subject of said transaction and defendant says that he did not consult with or advise with the defendant, H. B. Martin, at any time in said transaction. That he is informed and believes, and therefore, avers the fact to be, that the defendant, H. B. Martin, had no knowledge of the negotiations pending between the plaintiff and this defendant and the defendant A. E. Bradshaw, pertaining to the making of said contract, until the defendant, H. B. Martin, was called upon by the plaintiff and this defendant as counsel for the plaintiff to write the contract already heretofore agreed upon between the plaintiff, this defendant and the defendant A. E. Bradshaw. And this defendant denies that at any of the times mentioned in plaintiff's petition, the plaintiff was in any wise deceived, influenced or overreached by this defendant or any of his co-defendants with reference to any of the transactions complained of in plaintiff's

120 petition; but defendant, says and avers that all of said transactions were conducted on the part of the plaintiff of his own free will and choice and upon his own initiative, with full knowledge on the part of plaintiff of all the facts and circumstances of said transactions and all of them, and especially with full knowledge as to the value of the interests involved in said transactions, the condition of the property therein involved and the law governing the plaintiff's rights in dealing therewith.

And defendant further says that at the time of the execution of said lease exhibited as aforesaid in plaintiff's petition as Exhibit A., this defendant had no intimate knowledge of the value of said property, no experience in the oil mining business and very little knowledge thereof, all of which facts were well known to the plaintiff. But defendant avers that said oil and gas mining lease last above referred to was not at the time of its execution of the market value of more than $17,000.00, bonus. That the plaintiff had, before executing said lease to this defendant, negotiated in the oil and gas mining lease market at and about the city of Tulsa for a long time endeavoring to effect a sale of said land for the sum of $10,000.00, but was unable to find a sale thereof at said price until he succeeded in selling the same to the defendant, Bradshaw, and this defendant. That because of the risks and uncertainties and hazards of the oil and gas mining business and the long period of time it would be before the lessee could come into possession of said property, said lease at the time of its execution on the 24th day of August,

121 1909, was not worth to exceed $10,000.00 bonus.

This defendant says that several days after the execution of said oil and gas mining lease, as aforesaid, upon an examination of the records of the register of deeds of Tulsa county, Oklahoma, this defendant learned that the plaintiff had theretofore on the 18th day of September, 1909, conveyed by deed of general warranty, his title to the lands covered by said lease, to his mother Lizzie Gilcrease, and that said deed had been duly recorded in the office of the register of deeds of Tulsa county, Oklahoma. That this defendant thereupon notified the defendant H. B. Martin, as plaintiff's attorney, and the plaintiff himself, of said facts and demanded that the defect, or apparent defect, in the plaintiff's title to said lands be cured by obtaining some conveyance from the said Lizzie Gilcrease, or that the $2,000.00 theretofore paid by this defendant on account of the execution of said lease and the obligation of this defendant to pay to the plaintiff an additional $15,000.00 be delivered back and surrendered. That the plaintiff thereupon advised this defendant that he could and would procure from his mother, Lizzie Gilcrease, a sufficient conveyance to cure the said defect in plaintiff's title. And this defendant says that thereafter on or about the 4th day of September, 1909, the plaintiff caused the said Lizzie Gilcrease to execute and deliver to this defendant the oil and gas mining lease exhibited in plaintiff's petition as Exhibit B. That the said instrument was

executed by the said Lizzie Gilcrease, who was a woman of
122 education and experience and business judgment, after full consultation and advice between her, her husband and the plaintiff, and with full knowledge of all of the facts surrounding said transaction, including the value and condition of said leased premises.

And defendant further says that the defendant, A. E. Bradshaw, was not appointed the guardian of the plaintiff by the procurement of the defendant, H. B. Martin, as alleged in plaintiff's petition, but that said Bradshaw was selected by the plaintiff himself to be appointed as special guardian merely for the purpose of facilitating the collection of certain moneys due to the plaintiff and then in the hands of the U. S. Indian Superintendent at Muskogee, Oklahoma. That the only authority given the said Bradshaw by the order of his appointment in the county court of Tulsa county, Oklahoma, was to collect said funds, and that immediately upon the collection of said funds, they were paid over upon the request of the plaintiff and the order of the county court aforesaid to the plaintiff in person or according to his directions and order.

And answering defendant says that the said pretended appointment of the said A. D. Bradshaw as guardian aforesaid was wholly without jurisdiction for the reason that theretofore in a proceeding pending in the county court of Muskogee county, Oklahoma, the court at the time having jurisdiction of the plaintiff, and his estate, a guardian had been duly and regularly appointed for the person and estate of plaintiff, and that said proceedings and cause had not

been transferred from the said county court of Muskogee
123 county but remained therein, and that the county court of

Tulsa county had no jurisdiction in the premises. That the only purpose and effect of the pretended appointment of the said A. E. Bradshaw as guardian as aforesaid was to induce the U. S. Indian Superintendent to pay over the funds in his hands to which the plaintiff was entitled so that the plaintiff might receive and enjoy the same.

And this defendant says that at the time of the execution of said instruments, exhibited in plaintiff's petition as exhibits A and B., this defendant had taken advice from his counsel as to the validity of said leases, and had been theretofore advised that the same were valid, and this defendant, in good faith, believes that the plaintiff had full and competent power to execute said instruments of lease upon his part; that the plaintiff had full knowledge as to the value of said lease, and that the bonus of $17,000.00 paid and agreed to be paid to the plaintiff by this defendant was a fair and adequate consideration for said lease. That this defendant had no knowledge or suspicion of any defect in the validity of the said oil and gas mining leases theretofore executed by plaintiff and his mother to this defendant until about the month of July, 1910, when the defendant learned of the decision of the Supreme Court of the State of Oklahoma in the case of Jefferson vs. Winkler. And this answering defendant avers that about the time when said decision of the Supreme Court of Oklahoma in the case of Jefferson vs. Winkler aforesaid was handed down and promulgated, that the plaintiff was advised of said decision and fully advised as to its effect upon the va-
124 lidity of the contract theretofore entered into between the plaintiff and this defendant. That thereafter the plaintiff informed this defendant that he knew of said decision; that he was aware and had been advised by his counsel and others that the leases theretofore executed by him and his mother to this defendant might be by him avoided, but that he was satisfied with the fairness of said contract; that he did not wish to repudiate said contracts or pursue a course of dishonesty toward this defendant; that it was his intention to carry out said contract according to its terms. And this defendant says that he thereafter continued to pay to the plaintiff the payments falling due upon his said contract with the plaintiff as the same fell due, and relied upon the representations of the plaintiff that he intended to carry out said contract according to its terms, honestly and in good faith.

And defendant says that pursuant to said purpose so declared on the part of said plaintiff, the plaintiff began negotiations with this defendant to purchase an interest in said contract, and defendant says that thereafter, about the 22nd day of October, 1910, the plaintiff proposed to this defendant to purchase a one-fourth interest in this defendant's rights under the said contracts exhibited in plaintiff's petition as Exhibits A and B., for a consideration of $15,000.00. That this defendant agreed to said offer and proposition made by the plaintiff, and sold and assigned to the plaintiff on or about the said 22nd day of October, 1910, a one-fourth interest in said contracts for the agreed consideration of $15,000.00. That at the time of
125 said transaction, this defendant had paid to the plaintiff the

sum of $4,000.00 *if* the $17,000.00 bonus agreed to be paid by this defendant to the plaintiff for said lease, and that $13,000.00 of said bonus was not yet due and remained unpaid. And defendant says that the plaintiff, in consideration of said assignment of said one-fourth interest by this defendant to him, paid to this defendant the sum of $2,000.00 and surrendered the obligation of this defendant for said $13,000.00. And defendant says that at the special instance and request of the plaintiff, he, at or about the same time, sold and assigned to the defendant, H. B. Martin, a one-fourth interest in this defendant's rights under said contract for the agreed consideration of $15,000.00. That it was understood and agreed between this defendant, the plaintiff and the defendant H. B. Martin at the time, that the defendant, H. B. Martin, did not have available sufficient funds to pay the full purchase price of said assignment and that it would be necessary for this defendant to extend credit to the said defendant, Martin, for a part of said consideration, and to assist the defendant Martin in borrowing money to aid him in paying said consideration. That this defendant did accept the note of the defendant, H. B. Martin, for $6,000.00, as a part of said consideration, and assist the said H. B. Martin to borrow other moneys and funds with which to enable him to pay the purchase price of said assignment. That all of these facts were well known to the plaintiff at the time and by him fully concurred in and consented to.

126 And defendant says that in none of the transactions aforesaid, or any of the matters entering into the same, was there any deception, fraud or conspiracy practiced upon or against the said plaintiff by this defendant or any of his co-defendants, but that all of said transactions were conducted in good faith, fairly and with the full knowledge of the plaintiff therein.

Defendant further says that on the 8th day of February, 1911, the lease upon the plaintiff's said lands under which the said William H. Milliken and his associates had mined and operated said lands for oil, expired; that under the terms of said lease, the said Milliken was entitled to take away the derricks, lead lines, tubing, rods, engines, powers and all the equipment for mining purposes then upon the said premises except the casing in the wells, and was entitled to remove the casing from such wells as had ceased to produce oil in paying quantities. That under the terms of the said lease, the said Milliken had sixty days from the expiration thereof in which to remove said mining equipment. That it required an investment and expenditure, in order to purchase proper equipment to continue the operations upon said premises of mining oil of a large sum of money, to-wit about $40,000.00. That it was also necessary to devise some means of preventing an interruption of the operations of said wells for the reason that if they were permitted to stand idle for any considerable period, the water would flow in upon the oil sand in said wells and totally destroy their productiveness and value. And

127 defendant says that the plaintiffs had no personal experience in oil and gas mining operations, and no money or credit with which to provide the necessary equipment of said premises for oil and gas mining purposes and preserve the same from being in-

jured and destroyed for want of operation. The plaintiff was desirous of engaging in the operation of the open mines upon said land and did not wish to sell the same or sell the leasehold interest therein. The plaintiff thereupon proposed on or about the 8th day of February, 1911, to this defendant and the defendants, H. B. Martin and A. E. Bradshaw, to enter into a contract of partnership for the purpose of equipping said premises for oil and gas mining purposes and operating the same so long as oil and gas, or either of them, might be found upon said premises. It was thereupon agreed between the plaintiff and this defendant and the defendants, Martin and Bradshaw, that said parties, their heirs, representatives and assigns would purchase the necessary equipment aforesaid and provide the necessary means for operating the open mines upon said premises and continue the operation thereon so long as oil and gas or either of them should be found in paying quantities, sharing the profits and losses of said enterprise. That the plaintiff should receive as royalty free from all expenses, for the use of said mines, one-eighth of all the oil and gas produced from said mines, and that the shares of said parties in said business and its profits should be: This defendant one-

128 half; the plaintiff, one-fourth; and the defendant, H. B. Martin, one-fourth. Pursuant to said understanding and arrangement so entered into, the plaintiff and this defendant and the defendant, H. B. Martin, for the mutual considerations of giving their credit, money, attention and time to the conduct of said business, made, executed and mutually delivered their certain contract of partnership in writing, a copy of which is exhibited in plaintiff's petition as Exhibit D.

Defendant says that it was understood at the time between the plaintiff and the defendant Martin and this defendant, that the defendant, Bradshaw, would receive an assignment of a part of the interest of this defendant in said partnership contract. It was, however, agreed between the parties to said contract referred to as Exhibit D, that the said Bradshaw would participate in the conduct and operation of said mining business. And defendant says that the plaintiff, at the time of the execution of said partnership contract, was twenty-one years of age and of more than average intelligence, and of at least three years active successful experience in business. That the plaintiff was fully advised of the value of his said lands and the mines thereon, of the necessary cost of equipping the same for operation, and of the probable profits of such operation, and that the plaintiff was also aware of all laws and statutes and decisions of the courts bearing upon his right, title and interest in said lands and his contracts in relation thereto.

129 And defendant says that pursuant to the terms of the aforesaid contract of partnership, this defendant, the defendant Martin and the plaintiff purchased of divers persons equipment consisting of miscellaneous equipment in the sum of $23,387.94, buildings and houses for workmen at a cost of $903.13; rigs and derricks for oil wells, $4,084.21; pipe lines $5,629.95; tanks $2,490.00; tools $29.35; supplies $456.57; pumping $2,897.22; supervision $2,295.96; pulling and cleaning wells $2,707.83; gen-

eral labor $5,153.48; general expense $365.18; freight and express $249.64; telegrams expense $81.60; team and livery hire $3,106.45; use of tools and repairs, $626.57; an aggregate expense of $——. That they entered upon the possession of said premises and proceeded in the mining operations therson; that owing to the diligent, careful and competent care and attention to said mines given by the plaintiff and the said defendants, they were greatly improved in their production and value; that the productive capacity of said mines were increased from about 290 barrels per day to more than 500 barrels per day; that the value of said property was thereby greatly enhanced so that said mines with the equipment provided as aforesaid for the same, are now more than quadrupled in value.

And this defendant says that he has agreed to transfer to the defendant, A. E. Bradshaw, three-eight-s of his interest in said contract, of partnership, and to the defendant, Al Brown, two-eigh-s of the same, but that no actual transfer of said interest has yet been made.

130 And defendant says that the conduct of said business has produced large profits of which the plaintiff has from time to time both before and since the commencement of this action, taken his share under the terms of said partnership contract. That the plaintiff has received from time to time all the benefits of said contract accruing to him with full and competent knowledge of all the facts relating thereto, and defendant says that plaintiff ought to be and is, in equity, estopped to deny the validity of said partnership contract for any cause whatever.

And this defendant says and avers that of the earnings and profits of the business of said co-partnership, since the 8th day of February, 1911, the plaintiff has received and withdrawn, in cash, the sum of $25,293.45, all of which he still retains. That a considerable part of said profits have been taken by the plaintiff since the commencement of this action, and that all of said receipts by the plaintiff have been taken and received with full knowledge on his part of all the facts and circumstances surrounding the creation of said co-partnership, the execution of the partnership contract and all the facts and circumstances entering into the conduct of the partnership business. And plaintiff has received, besides said receipts, the benefit of his share under the partnership of all of the betterments of said property including its equipment, its development and its preservation, which benefits are worth to the plaintiff not less than $100,000; and this defendant says that the plaintiff *out* to be and is estopped in equity to impeach or set aside said partnership contract.

131 Wherefore, this defendant, having fully answered plaintiff's petition, prays that the plaintiff take nothing by this action, that this defendant recover his costs and all other and further relief to which he may be, in equity and good conscience, entitled.

——— ———,

Attorneys for Defendant G. R. McCullough.

Endorsements: No. 3125. District Court. Thomas Gilcrease vs. G. R. McCullough et al. Separate Answer of G. R. McCullough. District Court, State of Oklahoma, County of Tulsa. Filed Jun- 15, 1912. W. W. Stuckey, District Clerk. Martin, Bush & Murry, Attorneys for Defendants, Tulsa, Oklahoma.

132 And thereupon on the same day to-wit: the 15th day of June, 1912, there was filed the Separate Answer of the Defendant A. E. Bradshaw.

Which said Separate Answer is in the words and figures following, to-wit:

133 STATE OF OKLAHOMA,
County of Tulsa, ss:

In the District Court.

No. —.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. McCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Separate Answer of Defendant A. E. Bradshaw.

Comes now said defendant, A. E. Bradshaw, leave of court first having been obtained, and for his separate answer to the petition of plaintiff filed in said cause, says and avers:

That he denies each and every allegation and averment in said petition contained except such as are hereinafter specifically admitted, explained and modified.

This answering defendant admits that the plaintiff is a citizen by blood of the Creek Nation or Tribe of Indians, and has been enrolled on the tribal rolls of said nation made by the Dawes
134 Commission to the Five Civilized Tribes, but defendant says that he is informed and believes and, therefore, avers the fact to be that said plaintiff was so enrolled as of the age of nine years on the 8th day of February, 1899, and of one-eighth degree of Indian blood, opposite Roll Number 1505.

And answering defendant further admits that as such citizen of member of the Creek Nation or Tribe of Indians, plaintiff was entitled to and received an allotment of the lands of the said Creek Nation consisting of 160 acres, including surplus and homestead, lying, situate and being as alleged in plaintiff's petition, and that said lands were, on or about the 25th day of August, 1902, duly patented and conveyed to the plaintiff by the said Creek Nation.

And answering defendant admits that the defendants, G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown, are each

and all citizens of the State of Oklahoma and residents of the city of Tulsa and county of Tulsa in said state. That the defendant, G. R. McCullough, is president of the First National Bank of Tulsa, Oklahoma, and this defendant is cashier of said bank; and that before the connection of G. R. McCullough with this defendant with said First National Bank, they were each stockholders and officers of the Bank of Oklahoma; and that the defendant, H. B. Martin, is an attorney at law and practicing at the city of Tulsa in the State of Oklahoma for the past four years, and has at various times and in divers cases represented, in his professional capacity, the
135 Bank of Oklahoma and the First National Bank of Tulsa, Oklahoma.

And answering defendant admits that the Bank of Oklahoma nationalized in the year 1911, that is, become a national bank.

And answering defendant admits that the aforesaid land allotted to the plaintiff is situated in the oil field which is commonly known as Glenn Pool, and is underlaid with large and valuable deposits of petroleum.

And answering defendant admits that in the month of September, 1906, the plaintiff, through his guardian, one William L. Gilcrease, entered into a departmental oil and gas mining lease with one W. H. Milliken, embracing the land hereinbefore described, and that Milliken proceeded to develop the same for oil and drilled upon said land between the fall of 1906 and the summer of 1909, some forty-nine wells. That in August of 1909 about forty-two of said wells were producing oil but whether said wells were producing at said time more than twenty-five thousand barrels of oil per month, as alleged in plaintiff's petition, this answering defendant is not informed and neither admits nor denies.

And answering defendant admits that the plaintiff, on or about the 24th day of August, 1909, made, executed and delivered to the defendant, G. R. McCullough, the oil and gas mining lease exhibited in plaintiff's petition as Exhibit A, and that on or about the 18th day of September, 1908, the plaintiff has executed a
136 warranty deed, conveying said lands to his mother, Lizzie Gilcrease, which deed was recorded in the office of the Register of Deeds in Record Book 33 at page 529, and that the said Lizzie Gilcrease, on or about September 4, 1909, executed to the defendant, G. R. McCullough, the oil and gas mining lease exhibited in plaintiff's petition as Exhibit B, and admits that on or about the 21st day of April, 1910, the plaintiff and the defendant, H. B. Martin, executed the written contract exhibited in plaintiff's petition as Exhibit C.

And answering defendant admits that on or about the 22nd day of October, 1910, the defendant, G. R. McCullough, sold and transferred to the plaintiff one-fourth interest in the leases heretofore executed, to the said defendant, and sold and transferred to the defendant, H. B. Martin, a one-fourth interest in said leases. That previous to the said 22nd day of October, 1910, the defendant, G. R. McCullough, had paid to the plaintiff the sum of $4,000.00 of the original bonus by him agreed to be paid for the leases theretofore

executed to said defendant by the said Gilcrease and his mother, Lizzie Gilcrease, according to the terms of the contract between the said plaintiff and the said defendant, McCullough. That there remained of the said original bonus so agreed to be paid, the sum of $13,000.00, which was still unpaid by the defendant, McCullough, to the said Gilcrease, but avers that no part of said sum was at said time due.

And answering defendant admits that on or about the said 22nd day of October, 1910, the plaintiff surrendered to the defend-
137 ant, G. R. McCullough, as part consideration of the purchase by the plaintiff on said date, of a one-fourth interest in said leases, the said obligation of said defendant, McCullough to the plaintiff of the sum of $13,000.00, and paid to said defendant an additional sum of $2,000.00, aggregating the sum of $15,000.00, the price agreed upon between the plaintiff and said defendant as the purchase price of said interest.

And defendant admits that on the 8th day of February, 1911, the lease theretofore held upon said lands by the said William H. Milliken and his associates expired, and that the plaintiff and the defendants, G. R. McCullough and H. B. Martin, on said 8th day of February, 1911, made, executed and delivered, mutually, the written contract exhibited in plaintiff's petition as Exhibit D; and that on the 11th day of December, 1911, the defendant, H. B. Martin, made, executed and delivered to the plaintiff an assignment of three-fourths of the interest of said defendant under the said contract exhibited in plaintiff's petition as Exhibit D., by the written instrument exhibited in plaintiff's petition as Exhibit F; and this defendant admits that theretofore the defendant H. B. Martin had executed to the defendant, G. R. McCullough, an assignment of one-fourth of the interest of said defendant, Martin, in said contract exhibited in plaintiff's petition as Exhibit D; but this answering defendant says that the said assignment to said defendant, McCullough, was executed and delivered bf the said defendant, H. B. Martin, as security for the payment of certain indebtedness at the time due from the said defendant H. B. Martin, to the de-
138 fendant, G. R. McCullough, and to the First National Bank of Tulsa, Oklahoma, of which said G. R. McCullough was at the time president, and that said assignment was not intended as a conveyance or transfer of said interest except as security as aforesaid.

And defendant further answering, says that the plaintiff, Thomas Gilcrease, was not a person without education, business judgment and ability, as alleged in his petition, at any of the times mentioned therein, but that on the contrary the said plaintiff is well educated and has been accustomed to transact business of an important nature for several years before any of the times mentioned in plaintiff's petition. That plaintiff had theretofore conducted a store under his own management. That in February, 1909, the plaintiff, being a resident of the county of Wagoner, State of Oklahoma, for the purpose of obtaining the decree and judgment of that court conferring upon the plaintiff his rights of majority and removing his dis-

abilities of nonage; that due and legal service was had upon said application and that said court having jurisdiction of the plaintiff and of the subject matter of his said petition, heard evidence as to the competency and business capacity of the plaintiff, and found and adjudged that the plaintiff was capable of transactiong properly his own business and affairs, and rendered its judgment and decree granting plaintiff's said application and conferring upon him full right and authority to transact all business with the same effect as if he had reached the age of twenty-one years. That upon the rendering of said judgment and decree, the county court of Muskogee county, Oklahoma, in which a guardian had theretofore
139 been appointed for the person and estate of the plaintiff, discharged said guardian and caused plaintiff's property to be delivered over into his own hands and that plaintiff thereupon on or about the — day of February, 1909, assumed the control of all of his business affairs and has ever since conducted his business by his own efforts successfully.

And this defendant especially denies that prior to the execution of the oil and gas mining lease made by plaintiff to said defendant, G. R. McCullough, on the 24th day of August, 1909, or at any other time, exhibited in plaintiff's petition as Exhibit A., that any conspiracy, confederation, understanding or agreement of any kind was made between the defendant, G. R. McCullough, and his co-defendant H. B. Martin, on the subject of said transaction, and defendant says that the said defendant, G. R. McCullough, did not consult with or advise with the defendant, H. B. Martin, at any time in said transaction. That he is informed and believes, and therefore, avers the fact to be, that the defendant, H. B. Martin, had no knowledge of the negotiations pending between the plaintiff and this defendant and the defendant, G. R. McCullough, pertaining to the making of said contract, until the defendant, H. B. Martin, was called upon by the plaintiff and this defendant as counsel for the plaintiff to write the contract already theretofore agreed upon between the plaintiff, G. R. McCullough and this defendant. And this defendant denies that at any of the times mentioned in plaintiff's petition, the plaintiff was in any wise deceived, influenced or over-reached by this defendant or any of his co-defendants with reference to any of the transactions complained of in plain-
140 tiff's petition; but defendant says and avers that all of said transactions were conducted on the part of the plaintiff of his own free will and choice and upon his own initiative, with full knowledge on the part of the plaintiff of all the facts and circumstances of said transactions and all of them, and especially with full knowledge as to the value of the interests involved in said transactions, the condition of the property there in involved and the law governing the plaintiff's rights in dealing therewith.

And defendant further says that at the time of the execution of said lease exhibited as aforesaid in plaintiff's petition as Exhibit A., this defendant had no intimate knowledge of the value of said property, no experience in the oil mining business and very little knowledge thereof, all of which facts were well known to the plain-

tiff. But defendant avers that said oil and gas mining lease last above referred to was not at the time of its execution of the market value of more than $17,000.00 bonus. That the plaintiff had, before executing said lease to the defendant, G. R. McCullough, negotiated in the oil and gas mining lease market at and about the city of Tulsa for a long time, endeavoring to effect a sale of said lease for the sum of $10,000.00, but was unable to find a sale thereof at said price until he succeeded in selling the same to this defendant and the defendant, G. R. McCullough. That because of the risks and uncertainties and hazards of the oil and gas mining business and the long period of time it would be before the lessee could
141 come into possession of said property, said lease at the time of its execution on the 24th day of August, 1909, was not worth to exceed $10,000.00 bonus.

And defendant further says that this defendant was not appointed the guardian of the plaintiff by the procurement of the defendant, H. B. Martin, as alleged in plaintiff's petition but that this defendant was selected by the plaintiff himself to be appointed as special guardian merely for the purpose of facilitating the collection of certain moneys due to the plaintiff and then in the hands of the U. S. Indian Superintendent at Muskogee, Oklahoma. That the only authority given this defendant by the order of his appointment in the county court of Tulsa county, Oklahoma, was to collect said funds, and that immediately upon the collection of said funds, they were paid over upon the request of the plaintiff and the order of the county court aforesaid to the plaintiff in person or according to this directions and order.

And answering defendant says that the said pretended appointment of this defendant as guardian aforesaid was wholly without jurisdiction for the reason that theretofore in a proceeding pending in the county court of Muskogee county, Oklahoma, the court at the time having jurisdiction of the plaintiff and his estate, a guardian had been duly and regularly appointed for the person and estate of plaintiff, and that said proceedings and cause had not been transferred from the said county court of Muskogee county but remained therein, and that the county court of Tulsa county had no jurisdiction in the premises. That the only purpose and effect of the
142 pretended appointment of this defendant as guardian, as aforesaid, was to induce the U. S. Indian Superintendent to pay over the funds in his hands to which the plaintiff was entitled so that the plaintiff might receive and enjoy the same.

And defendant says that in none of the transactions aforesaid, or any of the matters entering into the same, was there any deception, fraud, or conspiracy practiced upon or against the said plaintiff by this defendant or any of his co-defendants, but that all of said transactions were conducted in good faith, fairly and with the full knowledge of the plaintiff therein.

Defendant further says that on the 8th day of February, 1911, the lease upon the plaintiff's said lands under which the said William H. Milliken and his associates had mined and operated said lands for oil, expired; that under the terms of said lease, the said

Milliken was entitled to take away the derricks, lead lines, tubing, rods, engines, powers and all the equipment for mining purposes then upon the said premises except the casing in the wells, and was entitled to remove the casing from such wells as had ceased to produce oil in paying quantities. That under the terms of said lease, the said Milliken had sixty days from the expiration thereof in which to remove said mining equipment. That it required an investment and expenditure, in order to purchase proper equipment to continue the operation upon said premises of mining oil of a large sum of money, to-wit: about $40,000.00. That it was also necessary to devise some means of preventing an interrup-
143 tion of the operations of the said wells for the reason that if they were permitted to stand idle for any considerable period, the water would flow in upon the oil sand in said wells and totally destroy their productiveness and value. And defendant says that the plaintiff had no personal experience in oil and gas mining operations, and no money or credit with which to provide the necessary equipment of said premises for oil and gas mining purposes and preserve the same from being injured and destroyed for want of operation. The plaintiff was desirous of engaging in the operation of the open mines upon said land and did not wish to sell the same or sell the leasehold interest therein. The plaintiff thereupon proposed on or about the 8th day of February, 1911, to this defendant and the defendants, H. B. Martin and G. R. McCullough, to enter into a contract of partnership for the purpose of equipping said premises for oil and gas mining purposes and operating the same so long as oil and gas, or either of them, might be found upon said premises. It was thereupon agreed between the plaintiff and this defendant and the defendants, McCullough and Martin, that said parties, their heirs, representatives or assigns, would purchase the necessary equipment aforesaid and provide the necessary means for operating the open mines upon said premsies and continue the operation thereon so long as oil and gas or either of them should be found in paying quantities, sharing the profits and losses of said enterprise. That the plaintiff should receive as royalty free from all expenses, for the use of said mines, one-eighth of all the oil and gas produced from said mines, and that the shares of said parties in said business and its profits should be; The defendant, G.
144 R. McCullough, one-half; the plaintiff, one-fourth, and the defendant, H. B. Martin, the remaining one-fourth. Pursuant to said understanding and arrangement so entered into, the plaintiff and the defendants, G. R. McCullough and H. B. Martin, for the mutual considerations of giving their credit, money, attention and time to the conduct of said business, made, executed and mutually delivered their certain contract of partnership in writing, a copy of which is exhibited in plaintiff's petition as Exhibit D.

Defendant says that it was understood at the time between the plaintiff and the defendants, G. R. McCullough and H. B. Martin, that this defendant would receive an assignment of a part of the interest of said defendant, McCullough, in said partnership contract. It was, however, agreed between the parties to said contract referred

to as Exhibit D., that this defendant would participate in the conduct and operation of said mining business. And defendant says that the plaintiff, at the time of the execution of said partnership contract, was twenty-one years of age and of more than average intelligence, and of at least three years active successful experience in business. That the plaintiff was fully advised of the value of his said lands and the mines thereon, of the necessary cost of equipping the same for operation, and of the probable profits of such operations, and that the plaintiff was also aware of all laws and statutes and decisions of the courts bearing upon his right, title and interest in said lands and his contracts in relation thereto.

145 And defendant says that pursuant to the terms of the aforesaid contract of partnership, the defendants, G. R. McCullough and H. B. Martin, and the plaintiff purchased of divers persons equipment consisting of miscellaneous equipment in the sum of $23,387.92; building and houses for workmen at a cost of $900.13; rigs and derricks for oil wells, $4084.21; pipe lines $5629.05; tanks, $2490.00; tools $29.35; supplies $456.57; pumping $2897.83; supervision $2295.96; pulling and cleaning wells, $2707.83; general labor $5153.48; general expenses $365.18; freight and express $249.64; telegrams expense $81.60; team and livery hire $3106.45; use of tools and repairs, $628.57; an aggregate expense of $—. That they entered upon the possession of said premises and proceeded in the mining operation thereon; that owing to the diligent, careful and competent care and attention to said mines given by the plaintiff and the said defendants, they were greatly improved in their production and value; that the productive capacity of said mines was increased from about 290 barrels per day to more than 500 barrels per day; that the value of said property was thereby greatly enhanced so that said mines with the equipment provided as aforesaid for the same, are now more than quadrupled in value.

And this defendant says that he has contracted and agreed with the defendant, G. R. McCullough, that the defendant, McCullough, shall assign and transfer to this defendant three-eighths of his interest in said contract of partnership, but that said transfer has not yet been made.

146 And defendant says that the conduct of said business has produced large profits of which the plaintiff has from time to time, both before and since the commencement of this action, taken his share under the terms of said partnership contract. That the plaintiff has received from time to time all the benefits of said contract accruing to him with full knowledge of all the facts relating thereto, and defendant says that plaintiff ought to be and is, in equity, estopped to deny the validity of said partnership contract for any cause whatever.

And this defendant says and avers that of the earnings and profits of the business of said co-partnership, since the 8th day of February, 1911, the plaintiff has received and withdrawn in cash, the sum of $25,292.45; all of which he still retains. That a considerable part of said profits have been taken by the plaintiff since

the commencement of this action, and that all of said receipts by the plaintiff have been taken and received with full knowledge on his part of all the facts and circumstances surrounding the creation of said co-partnership and execution of the partnership contract and all the facts and circumstances entering into the conduct of the partnership business. And the plaintiff has received, besides said receipts, the benefit of his share under the partnership of all of the betterments of said property, including its equipment, its development and its preservation, which benefits are worth to the plaintiff not less than $100,000.00; and this defendant says that the
147 plaintiff ought to be and is estopped in equity to impeach or set aside said partnership contract.

Wherefore, this defendant having fully answered plaintiff's petition, prays that the plaintiff take nothing by this action, that this defendant recover his costs and all other and further relief to which he may be, in equity and good conscience, entitled.

STUART, CRUCE & GILBERT,
MARTIN, BUSH & MURRY,
Attorneys for Defendant A. E. Bradshaw.

Endorsements: No. 3125. District Court. Thomas Gilcrease vs. G. R. McCullough et al. Separate Answer of A. E. Bradshaw. District Court, State of Oklahoma, County of Tulsa. Filed Jun- 15, 1912. W. W. Stuckey, District Clerk.

148 And thereupon on the same day to-wit: the 15th day of June, 1912, there was filed the separate Answer of the defendant, Al Brown;

Which said Separate Answer is in the words and figures following, to wit:

149 STATE OF OKLAHOMA,
County of Tulsa, ss:

In the District Court.

No. —.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Separate Answer of Defendant Al Brown.

Comes now the said defendant, Al Brown, leave of court first having been obtained, and for his separate answer to the petition of plaintiff filed in said cause, says and avers:

That he denies each and every allegation and averment in said

petition contained, except such as are hereinafter specifically admitted, explained or modified.

This answering defendant admits that the plaintiff is a citizen by blood of the Creek Nation or Tribe of Indians, and has been enrolled on the tribal rolls of said nation made by the Dawes Commission to the Five Civilized Tribes, but defendant says that he is informed and believes and therefore, avers, the facts to be that said plaintiff
150 was so enrolled as of the age of nine years on the 8th day of February, 1899, and of one-eighth degree of Indian blood, opposite Roll Number 1505.

And answering defendant further admits that as such citizen or member of the Creek Nation or Tribe of Indians, plaintiff was entitled to and received an allotment of the lands of the said Creek Nation, consisting of 160 acres, including surplus and homestead, lying, situate and being as alleged in plaintiff's petition, and that said lands were, on or about the 25th day of August, 1902, duly patented and conveyed to the plaintiff by the said Creek Nation.

And answering defendant admits that the defendant- G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown, are each and all citizens of the State of Oklahoma and residents of the city of Tulsa and county of Tulsa in said State. That the defendant, McCullough, is president of the First National Bank of Tulsa, Oklahoma, and A. E. Bradshaw is cashier of said Bank; and that before the connection of the defendants, G. R. McCullough and A. E. Bradshaw with said First National Bank, they were each stockholders and officers of the Bank of Oklahoma; and that the defendant, H. B. Martin, is an attorney at law and practicing at the city of Tulsa in the State of Oklahoma for the past four years, and has at various times in divers cases represented, in his professional capacity the Bank of Oklahoma and the First National Bank of Tulsa.

And answering defendant admits that the Bank of Oklahoma nationalized in the year 1911, that is, became a national
151 bank.

And answering defendant admits that the aforesaid land allotted to the plaintiff is situated in the oil field which is commonly known as Glenn Pool, and is underlaid with large and valuable deposits of petroleum.

And answering defendant admits that in the month of September, 1906, the plaintiff, through his guardian, one William L. Gilcrease, entered into a departmental oil and gas mining lease with one W. H. Milliken, embracing the land hereinbefore described, and that Milliken proceeded to develop the same for oil and drilled upon said land between the fall of 1906 and the summer of 1909, some forty-nine wells. That in August of 1909, about forty-two of said wells were producing oil, but whether said wells were producing at said time more than twenty-five thousand barrels of oil per month, as alleged in plaintiff's petition, this answering defendant is not informed and neither admits nor denies.

And answering defendant admits that the plaintiff, on or about the 24th day of August, 1909, made, executed and delivered to the defendant, G. R. McCullough, the oil and gas mining lease ex-

hibited in plaintiff's petition as Exhibit A, and that on or about the 18th day of September, 1908, the plaintiff had executed a warranty deed, conveying said lands to his mother Lizzie Gilcrease, which deed was recorded in the office of the Register of deeds in Record Book 33 at page 529, and that the said Lizzie Gilcrease, on
152 or about September 4, 1909, executed to the defendant, G. R. McCullough, the oil and gas mining lease exhibited in plaintiff's petition as Exhibit B, and admits that on or about the 21st day of April, 1910, the plaintiff and the defendant, H. B. Martin, executed the written contract exhibited in plaintiff's petition as Exhibit C.

And answering defendant admits that on or about the 22nd day of October, 1910, the defendant, McCullough, sold and transferred to the plaintiff a one-fourth interest in the leases theretofore executed by the plaintiff and his mother, Lizzie Gilcrease, to the said defendant, and sold and transferred to the defendant, H. B. Martin, a one-fourth interest in said lease.

And this defendant, for further answer, says that he denies specifically that this defendant, together with his co-defendants or any of them, at any time, conspired together with reference to any of the transactions set out and complained of in plaintiff's petition, and this defendant says that he has not, with reference to any of said transactions, participated either directly or indirectly in any of the negotiations with plaintiff; that he has had no dealings with plaintiff whatever with reference to any of the matters complained of in plaintiff's petition; that he had no dealings, at any time, or transactions, of any character, with reference to any of the matters and things complained of in plaintiff's petition with the defendant, H. B. Martin, nor the defendant, A. E. Bradshaw; and defendant says that the only transactions this defendant has had with
153 reference to any of the contracts, matters or things complained of in plaintiff's petition, consists of an agreement made between this defendant and the defendant, G. R. McCullough, that the defendant G. R. McCullough, would assign and transfer to this defendant two-eighths of the interest of the said defendant, G. R. McCullough in the partnership contract made and entered into between the defendants, G. R. McCullough and H. B. Martin, and the plaintiff on the 8th day of February, 1911, in consideration that this defendant would assume and pay his proportionate share of the liabilities and expenses arising under said partnership contract; that said agreement was an oral agreement and was made and entered into about the 8th day of February, 1911, and that said transfer has not yet been made in writing.

This defendant further answering says that he denies that any fraud, deceit, undue influence or over-reaching has been practiced against said plaintiff with reference to any of the matters and things complained of in plaintiff's petition by this defendant or any of his co-defendants.

Wherefore, the defendant, Al Brown, prays that he may go hence without day and reciver his costs herein expended, and for all other

and further relief to which he may be, in equity and good conscience, entitled.

STUART, CRUCE & GILBERT,
MARTIN, BUSH & MURRY,
Attorneys for Defendant Al Brown.

154–156 Endorsements: No. 3125. District Court. Thomas Gilcrease vs. G. R. McCullough et al. Separate Answer of Al Brown. District Court. State of Oklahoma County of Tulsa. Filed Jan. 15, 1912. W. W. Stuckey District Clerk. Martin, Bush & Murry, Attorneys for Defendants, Tulsa, Oklahoma.

* * * * * * *

157 In the District Court of Tulsa County, State of Oklahoma.

No. 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Reply to Separate Answer of H. B. Martin.

Comes now the plaintiff Thomas Gilcrease by his attorneys Biddison & Campbell and Preston C. West and for his reply to the separate answers of the defendant, H. B. Martin, filed herein, states:

I.

That he denies all the allegations of said answer other than those allegations which admit the averments of plaintiff's petition.

II.

And for further reply to said answer, the plaintiff denies that he was enrolled by the Commission to the Five Civilized Tribes as of the age of nine years on the 8th day of February, 1899, and avers the truth and the fact to be that he was duly enrolled by said Commission as being nine years of age on the 9th day of June, 1899, and that by said rolls which are made conclusive evidence of
158 his age by the Act of Congress approved May 27, 1908, the plaintiff did not become twenty-one years of age and did not attain his majority so as to be legally capable of transacting his own affairs and dealing with his allotment until the 9th day of June, A. D. 1911.

III.

For further reply to said answer, the plaintiff says that he denies that at the time he entered into the written contract of April 21,

1910, retaining the defendant H. B. Martin as his counsel he had any knowledge or information of any arrangement, promise, contract or agreement between said Martin and his then law partner B. T. Hainer, and denies that such arrangement was ever suggested or intimated to or discussed in any shape, manner or form between plaintiff and said defendant Martin, and denies that he acquiesced in or consented to any such arrangement or had any knowledge whatever of the same.

IV.

Further replying to said answer, the plaintiff denies that he had prior to February, 1909, conducted a store under his own management, and denies that in February, 1909, or at any other time there was ever made and entered any order or decree of the district court of Wagoner county or of any other court, whereby there was granted to plaintiff full right and authority to transact all his business with the same effect as if he had reached the age of twenty-one years or any authority whatsoever to transact any business, but states and shows to the court that the alleged and pretended order made by said district court of Wagoner county was wholly without any
159 jurisdiction in the premises, and that the alleged petition filed in said court was filed by the defendant H. B. Martin and that the plaintiff acted under the domination, control and influence of the said Martin, and that all that this plaintiff did in and about said matter was done upon the advice and direction of the said H. B. Martin and in full reliance upon said H. B. Martin both as to the legal aspects of the matter and as to the same being for the best interest and advantage of this defendant; that neither the district court of Wagoner county nor any other county had any such jurisdiction as a matter of fact, and that the pretended proceedings in said court did not conform to the statute in force in the State of Oklahoma with reference to the removal of disabilities from minors, and that no court could or did in February, 1909, or at any other time, confer upon the plaintiff, who was then a minor, any right or authority whatsoever to transact his business as though of full age, and that the pretended order plead by the defendant is a nullity.

V.

For further reply to said answer, the plaintiff states and shows to the court that it is not true as alleged in the answer of said defendant Martin that prior to the execution of the pretended lease of August 24, 1909, said Martin had no business or social relations with defendants A. E. Bradshaw and Al Brown, and not true that defendant Martin was not consulted by the plaintiff with reference to the making of said lease, and not true that he was not consulted
160 as to the advisability of executing said lease, and that it is not true that at the time and before the execution of said pretended lease, H. B. Martin was not retained or employed by the plaintiff to advise him with reference to any of his business or transactions except as to the legal questions arising therein, but that in

truth and in fact the plaintiff herein had not only for many months preceding the 24th day of August, 1909, applied to and received advice from said H. B. Martin with reference to the policy to be pursued in his business transactions and the advisability of the various transactions into which he entered but that he relied very largely upon the counsel and advice of said Martin, and this the defendant Martin well knew; and that on the 24th day of August, 1909, this plaintiff was practically under the complete domination and control of said Martin and so continued for a long time thereafter and until within less than thirty (30) days prior to the filing of the petition in this cause, and that said Martin well knew of his influence over and domination of the will of this plaintiff and of this plaintiff's reliance upon him not only as a legal adviser, but as a friend and business counselor as well and has used said influence and said reliance to the undoing of this plaintiff; and the plaintiff denies that defendant Martin had no communication with the defendant G. R. McCullough with reference to the execution of said pretended lease of August 24, 1909, before the occasion of the execution of said instrument.

VI.

For a further reply to said answer plaintiff states and
161 shows to the court that it is not true as alleged in said answer that the oil and gas mining lease alleged to have been executed by this plaintiff to the defendants in this cause was not at the time of its execution, of the value of more than Seventeen Thousand Dollars bonus, and denies that plaintiff had been for a long time endeavoring to negotiate a sale of said lease for Ten Thousand dollars but was unable to find a sale thereof at said price, and denies that said lease was not at the time of its execution to-wit: the 24th day of August, 1909, worth to exceed Ten Thousand dollars, but alleges the truth and the fact to be that a valid lease upon the premises named in said paper of August 24, 1909, would have been worth a bonus of not less than $—.

VII.

For further reply to said answer, plaintiff denies that it was at his direction that the lease from Lizzie Gilcrease to the defendant McCullough executed on the 4th day of September, 1909, was prepared and submitted to said Lizzie Gilcrease; but states and shows to the court that the truth and the fact in regard thereto was that said lease was suggested, advised and prepared by the defendant H. B. Martin, and that the plaintiff exercised no independent will or judgment in regard thereto and owing to the influence of said H. B. Martin over him he was at the time incapable of executing such independent will or judgment and that Lizzie Gilcrease, the mother of this plaintiff, although possessed of some education, is wholly
162 without business training or experience or judgment, and that she equally with the plaintiff herein relied absolutely upon the defendant H. B. Martin in and about said matter.

VIII.

For a further reply to the said answer, plaintiff says that it is not true as alleged in the separate answer of defendant H. B. Martin that the county court of Tulsa county was without jurisdiction to appoint A. E. Bradshaw guardian of the plaintiff; that in truth and in fact said county court of Tulsa county did have jurisdiction and was the only court which had or could exercise any such jurisdiction, and that the previous guardianship pending in Muskogee county had long since been terminated and there was no guardian for plaintiff at the time of the appointment of A. E. Bradshaw, and that in all the matters in and about the appointment of said A. E. Bradshaw, plaintiff relied implicitly upon the legal advice and business judgment of the defendant H. B. Martin, and that every act and step taken by the plaintiff in said matter was done under the direction of the said H. B. Martin, and none of said acts would have been done nor steps taken but for the reliance of plaintiff upon the direction, counsel and advice of the defendant H. B. Martin, both as to the legality thereof and as to their expediency.

IX.

For a further reply, the plaintiff denies that he ever said to the defendant H. B. Martin that he was perfectly satisfied with the alleged and pretended lease made to the defendant McCullough and desired to carry out said pretended contract and did not wish to adopt a course of repudiation or dishonesty; that this plaint-
163 iff has never at any time desired to adopt a course of dishonesty and does not now so desire, but that he would never at any time have made said contract had he been fully advised of all the facts and fairly counseled by those in whom he placed trust and reliance. Plaintiff says that it is not true that pursuant to any purpose declared by plaintiff to carry out his alleged contract with McCullough, the defendant Martin began negotiations to purchase an interest in said contract for plaintiff, and it is not true that the plaintiff requested the defendant Martin to join him in such purchase, but the truth and the fact in regard to said matter is as alleged in plaintiff's petition; that it is not true that the plaintiff insisted that the defendant Martin purchase an interest and offered to assist him in obtaining funds for such purpose; and not true that the defendant Martin consented to and did purchase from McCullough a one-fourth interest at the urgent request of the plaintiff; but that the truth of said matter is as alleged in plaintiff's petition and not otherwise; that it is not true that at the time of said transaction the defendant Martin was obliged to borrow and did borrow from the defendant McCullough and others a large part of the funds with which his purchase was made; and not true that any of said facts or any part of such facts were known to the plaintiff, but that in truth no such facts existed and no consideration whatever was ever paid by this defendant Martin for his pretended interest in said leasehold.

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X.

For a further reply to said answer, the plaintiff denies that he proposed on or about the 8th day of February, 1911, to the defendant H. B. Martin and the defendants G. R. McCullough and A. E. Bradshaw, to enter into a contract of partnership for the purpose of equipping the premises involved in litigation in this suit for oil and gas mining purposes and operating the same so long as oil and gas might be found upon said premises; and that it is not true that the plaintiff ever entered into any contract of copartnership with said defendants, but that the instrument of writing attached to plaintiff's petition as Exhibit "D" and referred to in defendant's answer, was the only writing or contract entered into and that the same was entered into at the suggestion and instance of the defendant Martin and his co-defendants and while the domination and influence of said defendant Martin still continued and while the plaintiff was still under the complete influence and dominion of the said guardian as to all of the matters pertaining to his business, and that said contract was in truth and in fact, as alleged in plaintiff's petition, but the culminating step in the conspiracy and design formed by the defendants to obtain from the plaintiff the property of the plaintiff for a mere fraction of its real value and to so use the influence of the defendant Martin over said plaintiff as to obtain for said Martin and his co-defendants a large interest in said property without the payment of any real consideration by them or either of them; and

165 the plaintiff denies that said paper writing would constitute a contract of copartnerhsip even if it were a valid contract at all; and the plaintiff denies that he knew or understood what the relationship of A. E. Bradshaw to the other defendants was or what his share in said contract was to be, or what part he was to play therein until just prior to the institution of this suit, and denies that he, the said plaintiff, was fully advised of the value of his lands and of the mines thereon and of the necessary cost of equipping the same and the probable profits arising from operation thereof; and denies that he was aware of all the laws, statutes and decisions of the courts bearing upon his right, title and interest in said lands; but states the truth and the fact to be that the only knowledge he had of his legal status and of the effect of the said several instruments executed by him was derived from the defendant H. B. Martin, and that each and every of the instruments under and by and through which the defendant Martin and his co-defendants claim in this cause were executed while the plaintiff was a minor and legally incapable of executing the same and while he was still under the influence and domination of the said defendant H. B. Martin and still relied implicitly upon his counsel and advice both as to the legal effect of said matters and as to the best business policy to be pursued by the plaintiff and the expediency of making and entering into said contract.

XI.

For further reply to said answer, the plaintiff says that he has not kept the books pertaining to the lease involved in this controversy

and has not been kept fully advised of the receipts and ex-
166 penditures and is not now possessed of sufficient knowledge or information to either affirm or deny the allegations contained in the answer of this defendant with reference to the amount so expended. He admits that the defendants have entered into possession of the premises and that they are still in possession thereof and that so far as he knows, the operations conducted on said premises have been properly conducted, but he denies that the value of said property has been enhanced thereby other than the value of the equipment placed thereon, and states the truth and the fact to be that said lease would have been of the same value under the management of any competent person; and the plaintiff denies that he has at any time after he became acquainted with the facts in regard to the transactions set out in his petition herein, accepted or received any benefits from this defendant or from any of his co-defendants growing out of said transactions, or done any other act that in equity will or ought to estop him to deny the validity of any and all of his said pretended leases, contracts and agreements, but that each and every of said leases, contracts, agreements and writings were entered into by this plaintiff while he was still a minor and legally incapable of executing the same and while he was still under the domination of the defendant H. B. Martin and still relied implicitly upon the good faith of said H. B. Martin and upon his ability to advise him correctly as to his legal status and also to counsel him as to
167 the business policy to be pursued and while he was still in ignorance of the true state of facts with reference to said matters and in ignorance of the truth with reference to the relations existing and subsisting between the defendant H. B. Martin and his co-defendants herein.

XII.

For further reply to said answer, the plaintiff denies that any demand made by B. T. Hainer, the former law partner of the defendant H. B. Martin, with reference to compensation for the time taken by said defendant Martin to look after his oil interest, was ever discussed with the plaintiff; that he ever assented thereto, denies that in truth or in fact any such demand was ever made; denies that $12,500 would be a fair compensation therefor; denies that he ever understood, agreed or consented to or concurred in or had any knowledge of such arrangement; denies that the sum of $12,500 or any other sum was ever paid by the defendant H. B. Martin in discharge of said claim, and denies that said transaction has no relation to or bearing whatever upon the issue involved in this suit.

XIII.

For further reply to the said answer, plaintiff says that he denies in toto the statements contained in said answer with reference to his proposing on the 11th day of December, 1911, to the plaintiff, a settlement of their accounts, but admits that there was a settlement

had based, however, wholly upon the mistaken belief that defendant H. B. Martin was then the owner of an interest in a leasehold estate upon the premises involved in this controversy, and the plain-
168 tiff avers that said transactions were as stated in plaintiff's petition and not otherwise; he denies that there was then or is now or ever at any time has existed, any partnership contract with reference to the premises involved in this suit, but states the truth and the fact to be that all of the property conveyed by plaintiff to defendant Martin in said transaction was without consideration.

XIV.

And for further reply to the said answer, the plaintiff denies that on the 12th day of February, 1912, or at any other time after the plaintiff had caused to be dictated his petition in this cause and was about to file the same or ever at any time after plaintiff became aware of the truth in regard to these transactions he brought to the defendant Martin W. A. Branson and Henry Payne and stated to Mr. Branson and Mr. Payne in the presence of said defendant that said defendant owned the property where plaintiff then and now resides and advised the defendant Martin to contract with said Branson and Payne to have trees transplanted upon said property, and denies that the defendant Martin acted upon the advice of plaintiff in contracting with said Branson and Payne if he did so contract, but avers his willingness, if in fact any trees have been planted upon said premises, to allow the defendant Martin credit for the value which has thereby been imparted to said premises and to deduct the same from the amount which plaintiff is entitled to recover from said defendant upon final judgment in this cause; and the plain-
169 tiff also avers his willingness that any taxes actually paid by this defendant upon the property heretofore conveyed by him to the defendant Martin may be credited against the amount of plaintiff's final recovery against said Martin in this action.

XV.

And for further reply to the said answer, plaintiff denies that he has ever since the 11th day of December, 1911, or at any other time, with the knowledge of his rights in the premises and of the true condition and state of facts in regard to the transactions set out in his petition herein, taken, appropriated and enjoyed any profits arising from said transactions, or that he is estopped to deny the validity thereof; and denies that he has ever at any time since he discovered the truth in regard to said transactions done any act tending to ratify the same; but states the truth and the fact to be that he has at all times since he became aware of the facts and of his legal rights in the premises upheld the invalidity of all of said pretended contracts and conveyances and has demanded at all times that the defendant H. B. Martin and his co-defendants restore to him that which has been obtained from him without consideration and by virtue of their unlawful, wrongful and fraudulent transactions.

Wherefore, the plaintiff prays that he have a judgment and decree in this cause against this defendant as prayed for in plaintiff's petition filed herein, and that the court make all such orders
170 and grant all such relief as the facts may warrant and the court shall in equity and good conscience deem proper.

P. C. WEST AND
BIDDISON & CAMPBELL,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Tulsa County, ss:

Thomas Gilcrease, of lawful age, being first duly sworn, on his oath says:

That he is the plaintiff in the above entitled cause, and that he has read the above and foregoing reply to the separate answer of the defendant H. B. Martin; knows the contents thereof, and that the statements therein contained are true.

THOMAS GILCREASE.

Subscribed and sworn to before me this — day of July, 1912.

[SEAL.] W. V. BIDDISON,
Notary Public.

My Com. Ex. 11-22-1915.

171 On the back of which Reply appear the following endorsements, to-wit: No. 3125. In the District Court of Tulsa County, Oklahoma. Thomas Gilcrease, Plaintiff, vs G. R. McCullough et al., Defendants. Reply to Separate Answer of H. B. Martin. District Court, State of Oklahoma, County of Tulsa. Filed Aug. 7, 1912. W. W. Stuckey, District Clerk. Biddison & Campbell, Attorneys for Plaintiff.

172 And thereupon, on the same day, to-wit: the 7th day of August, 1912, there was filed the Reply of the plaintiff to the Separate Answer of the defendant, G. R. McCullough, which said Reply is in the words and figures following, to-wit:

173 In the District Court of Tulsa County, State of Oklahoma.

No. 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. F. BRADSHAW, and AL BROWN, Defendants.

Reply to Separate Answer of G. R. McCullough.

Comes now the plaintiff Thomas Gilcrease by his attorneys Biddison & Campbell and Preston C. West and for his reply to the separate answer of the defendant G. R. McCullough, filed herein, states:

I.

That he denies all the allegations of said answer other than those allegations which admit the averments of plaintiff's petition.

II.

And for further reply to said answer, the plaintiff denies that he was enrolled by the Commission to the Five Civilized Tribes as of the age of nine years on the 8th day of February, 1899, and avers the truth and the fact to be that he was duly enrolled by said Commission as being nine years of age on the 9th day of June, *1811* and that by said rolls which are made conclusive evidence of his
174 age by the Act of Congress approved May 27, 1908, the plaintiff did not become twenty-one years of age and did not attain his majority so as to be legally capable of transacting his own affairs and dealing with his allotment until the 9th day of June, A. D. 1911.

III.

Further replying to said answer, the plaintiff denies that he had prior to February, 1909, conducted a store under his own management, and denies that in February, 1909, or at any other time there was ever made and entered any order or decree of the district court of Wagoner county or of any other court, whereby there was granted to plaintiff full right and authority to transact all his business with the same effect as if he had reached the age of twenty-one years or any authority whatsoever to transact any business, but states and shows to the court that the alleged and pretended order made by said district court of Wagoner county was wholly without any jurisdiction in the premises, and that the alleged petition filed in said court was filed by the defendant H. B. Martin and that the plaintiff acted under the domination, control and influence of the said Martin, and that all that this plaintiff did in and about said matter was done upon the advice and direction of the said H. B. Martin and in full reliance upon said H. B. Martin both as to the legal aspects of the matter and as to the same being for the interest and advantage of this defendant; that neither the district court of Wagoner county nor any other county had any such jurisdiction as a matter of fact, and that the pretended proceedings in said court did
175 not conform to the statute in force in the State of Oklahoma with reference to the removal of disabilities from minors, and that no court could or did in February, 1909, or at any other time, confer upon the plaintiff, who was then a minor, any right or authority whatsoever to transact his business as though of full age, and that the pretended order plead by the defendant is a nullity.

IV.

For further reply to said answer, the plaintiff states and shows to the court that it is not true as alleged in the answer of said de-

fendant McCullough that prior to the execution of the pretended lease of August 24, 1909, this defendant did not consult and advise with the defendant H. B. Martin and not true that said defendant H. B. Martin had no knowledge of the negotiations pending between plaintiff and this defendant and the defendant Bradshaw until said Martin was called upon to write the contract already theretofore agreed upon; this plaintiff denies that said transactions were conducted on his part of his own free will and choice and upon his own initiative and with full knowledge as to the value of the interests involved in the transaction and the condition of the property and the law governing his rights, and denies that plaintiff had any knowledge or experience in the oil mining business, and denies that the said lease was not at the time of its execution of the market value of more than $17,000 bonus, and denies that plaintiff had prior to the execution thereof negotiated in the oil and gas mining lease market at and about the city of Tulsa for a long
176 time endeavoring to effect a sale of said lease for the sum of $10,000 but was unable to find a sale thereof at said price until he succeeded in selling the same to the defendants McCullough and Bradshaw, and denies that said lease was not worth to exceed $10,000, but states the truth and the fact to be that said lease was worth a bonus of several times that amount, and the plaintiff specifically avers that for many months preceding the 24th day of August, 1909, plaintiff had applied for and received advice from H. B. Martin, one of the defendants herein, with reference to the policy to be pursued in his business transactions and the advisability of the various transactions into which he entered, and that he relied very largely upon the counsel and advice of said Martin, and this the said defendant Martin as well as the other defendants herein well knew; and that on the 24th day of August, 1909, this plaintiff was practically under the complete domination and control of said Martin and so continued for a long time thereafter and until within less than 30 days prior to the filing of the petition in this cause; and that the influence and domination of said Martin over the will of this plaintiff and this plaintiff's reliance upon said Martin not only as a legal adviser but as a friend and business counselor as well, was fully known not only to the said defendant Martin but to the defendants McCullough, Bradshaw and Brown, and all of said defendants relied upon said influence and used the same in furtherance of their unlawful purpose of obtaining plaintiff's property at less than its real value; and plaintiff avers the truth to be that there was a complete understanding between all of the defendants herein prior to the execution of said pretended lease of August 24, 1909.

177 V.

For further reply to said answer, the plaintiff denies that it was several days after the execution of the oil and gas mining lease of August 24, 1909, that defendant McCullough learned that plaintiff had theretofore on the 18th day of September, 1909 conveyed by deed of general warranty his title to the lands covered by the lease

to his mother Lizzie Gilcrease, and the circumstances averred in this defendant's answer in regard thereto are not true; that in truth and in fact the deed from plaintiff to his mother, Lizzie Gilcrease was executed on the 18th day of September, 1908 and had been of record for almost a year; and the plaintiff prior to the execution of the lease of August 24, 1909 acquainted the defendant H. B. Martin and the defendant Bradshaw fully with said situation of affairs and explained the circumstances under which said deed to Lizzie Gilcrease was made; but whether he ever stated in so many words to the defendant McCullough those circumstances, he is unable at this time to aver, and this plaintiff denies that it was at his direction that the lease from Lizzie Gilcrease executed on the 4th day of September 1909 was prepared and submitted to said Lizzie Gilcrease upon plaintiff's suggestion and at his direction, but states and shows to the court that the truth and the fact in regard thereto is that said lease was suggested, advised, and prepared by the defendant H. B. Martin, and that the plaintiff exercised no independent will or judgment in regard thereto, and that owing to the influence of said H. B. Martin, he was at the time incapable of executing such independent
178 will or judgment; that Lizzie Gilcrease, the mother of this plaintiff, although possessed of some education, is wholly without business training or experience or judgment, and that she equally with the plaintiff herein relied absolutely upon the defendant H. B. Martin and about said matter and that all of said facts were well known to all of the defendants herein.

VI.

For further reply to said answer, the plaintiff denies that the defendant A. E. Bradshaw was selected by plaintiff himself to be appointed as special guardian in manner and form as stated in defendant McCullough's answer, and not true as alleged in the separate answer of said defendant McCullough that the county court of Tulsa county was without jurisdiction to appoint A. E. Bradshaw guardian of the plaintiff; that in truth and in fact said county court of Tulsa county did have jurisdiction and was the only court which had or could exercise any such jurisdiction, and that the previous guardianship pending in Muskogee county had long since been terminated and there was no guardian for plaintiff at the time of the appointment of A. E. Bradshaw, and that in all the matters in and about the appointment of A. E. Bradshaw, plaintiff relied implicitly upon the legal advice and business judgment of the defendant H. B. Martin, and that every act and step taken by the plaintiff in said matter was done under the direction of the said H. B. Martin, and none of said acts would have been done or steps taken but for the reliance of plaintiff upon the direction,
179 counsel, and advice of the defendant H. B. Martin both as to the legality thereof and as to their expediency.

VII.

For further reply to said answer, plaintiff says that it is not true as averred in the separate answer of defendant McCullough that

plaintiff had full knowledge of the value of said lease and that the bonus agreed to be paid by defendants was a fair and adequate consideration, and denies that the bonus of $17,000 was either a fair or an adequate consideration; that it is not true that defendant McCullough had no knowledge or suspicion of any defect in the validity of said oil and gas mining lease until about the month of July, 1910 when the decision of the Supreme Court in the case of Jefferson vs. Winkler was handed down and promulgated; and it is not true that after plaintiff was informed of said opinion and of its effect or at any other time he stated to the defendant McCullough or to any of the defendants that he did not wish to repudiate his contract or pursue a course of dishonesty towards the defendant; that plaintiff has never at any time desired to pursue a course of dishonesty and has never pursued any such course at any time. That plaintiff was never advised fully of the deception and fraud that had been practiced against him until shortly before the institution of this suit and was never fully advised of his rights in the premises until he sought other counsel than those upon whom he had relied and in whom he had confided up to that time, and
180 that plaintiff is willing to restore to the defendants and each of them whatever of value, if anything, be found by the court that he has received from them, and is only asking to have restored to him that which they have illegally taken from him and the title to which is now in the plaintiff, and has at all times been in him and to which neither of the defendants have ever at any time had any right or title.

VIII.

For further reply to said answer, plaintiff says it is not true that pursuant to a purpose declared by plaintiff of carrying out his contract plaintiff began negotiations with defendant to purchase an interest in said contract and thereafter and on the 22nd day of October, 1910 proposed to purchase a one-fourth interest for a consideration of $15,000 in manner and form as set forth in the answer of the defendant McCullough, but states the truth and the fact to be in regard to the matter as is alleged in plaintiff's petition and not otherwise, and denies that this defendant at plaintiff's special instance and request sold and assigned to the defendant H. B. Martin a one-fourth interest in said contract for an agreed consideration of $15,000, and further denies that a consideration of $15,000 or any other consideration was paid by Martin or agreed to be paid, and further denies that it was understood and agreed between plaintiff and defendant McCullough and defendant Martin that the defendant Martin did not have funds to pay the full purchase price and that defendant McCullough should extend credit to defendant Martin for a part of the consideration, and that it is not
181 true that defendant McCullough accepted the note of the defendant Martin for $6000 as part of said consideration and assisted Martin to borrow other moneys and funds to enable him to pay the purchase price, and not true that the plain-

tiff knew any or all of such facts, and not true that there were any such facts for the plaintiff either to know or to concur in and consent to; that not only did no such facts in truth exist but that no consideration whatever was ever paid by the defendant Martin for his pretended interest in said leasehold.

IX.

For a further reply to said answer, the plaintiff denies that he proposed on or about the 8th day of February, 1911, to the defendant H. B. Martin and the defendants G. R. McCullough and A. E. Bradshaw, to enter into a contract of partnership for the purpose of equipping the premises involved in litigation in this suit for oil and gas mining purposes and operating the same so long as oil and gas might be found upon said premises; and that it is not true that the plaintiff ever entered into any contract of co-partnership with said defendants, but that the instrument of writing attached to plaintiff's petition as Exhibit "D" and referred to in defendants' answer, was the only writing or contract entered into and that the same was entered into at the suggestion and instance of the defendant Martin and his co-defendants and while the domination and influence of said defendant Martin still continued and while the plaintiff was still under the complete influence and dominion of the said guardian as to all of the matters
182 pertaining to his business, and that said contract was in truth and in fact, as alleged in plaintiff's petition, but the culminating step in the conspiracy and design formed by the defendants to obtain from the plaintiff the property of the plaintiff for a mere fraction of its real value and to so use the influence of the defendant Martin over said plaintiff as to obtain for said Martin and his co-defendants a large interest in said property without the payment of any real consideration by them or either of them; and the plaintiff denies that said paper writing would constitute a contract of co-partnership even if it were a valid contract at all; and the plaintiff denies that he knew or understood what the relationship of A. E. Bradshaw to the other defendants was or what his share in said contract was to be, or what part he was to play therein until just prior to the in-titution of this suit, and denies that he, the said plaintiff, was fully advised of the value of his lands and of the mines thereon and of the necessary cost of equipping the same and the probable profits arising from operation thereof; and denies that he was aware of all the laws, statutes and decisions of the courts bearing upon his right, title and interest in said lands; but states the truth and the fact to be that the only knowledge he had of his legal status and of the effect of the said several instruments executed by him was derived from the defendant H. B. Martin, and that each and every of the instruments under and by and through which the defendant Martin and his co-defendants claim in this cause were executed while plaintiff was a minor and legally
183 incapable of executing the same and while he was still under the influence and domination of the said defendant H. B.

Martin and still relied implicitly upon his counsel and advice both as to the legal effect of said matters and as to the best business policy to be pursued by the plaintiff and the expediency of making and entering into said contract, and the plaintiff's reliance upon said Martin and said Martin's influence over him were well known to each of the defendants herein.

X.

For further reply to said answer, the plaintiff says that he has not kept the books pertaining to the lease involved in this controversy and has not been kept fully advised of the receipts and expenditures and is not now possessed of sufficient knowledge or information to either affirm or deny the allegations contained in the answer of this defendant with reference to the amount so expended. He admits that the defendants have entered into possession of the premises and that they are still in possession thereof and that so far as he knows, the operations conducted on said premises have been properly conducted, but he denies that the value of said property has been enhanced thereby other than the value of the equipment placed thereon, and states the truth and the fact to be that said lease would have been of the same value under the management of any competent person; and the plaintiff denies that he has at any time after he became acquainted with the facts in regard to the transactions set out in his petition herein, accepted or received any benefits from this defendant or from any of his co-de-
184 fendants growing out of said transactions, or done any other act that in equity will or ought to estop him to deny the validity of any and all of his said pretended leases, contracts and agreements, but that each and every of said leases, contracts, agreements and writings were entered into by this plaintiff while he was still a minor and legally incapable of executing the same and while he was still under the domination of the defendant H. B. Martin and still relied implicitly upon the good faith of said H. B. Martin and upon his ability to advise him correctly as to his legal status and also to counsel him as to the business policy to be pursued and while he was still in ignorance of the true state of facts with reference to said matters and in ignorance of the truth with reference to the relations existing and subsisting between the defendant McCullough and his co-defendants herein.

XI.

For further reply to said answer, the plaintiff denying the existence of any partnership contract and denying the existence of any valid contract whatever between this plaintiff and the defendants or either of them, further denies that he has received or withdrawn in cash the sum of $25,293.45, all of which he still retains, and further denies that he has received any profits from said business since the commencement of this action, and denies that he has ever at any time received anything from the defendants or either of them

with full knowledge of all the facts and circumstances and of
185 his legal rights in the premises; that this plaintiff has received since February 11, 1908 from sales of oil taken from the property involved in this controversy approximately $20,000, but that said moneys so received by him were the proceeds of the sale of oil taken from the premises all of which belonged to the plaintiff, and that the defendants in this action have without right taken more than $50,000 of the proceeds of said oil and converted the same to their own use and this plaintiff denies that he received in betterments to said property from the defendants, the sum of $100,000 or any other sum, but states the truth and the fact to be that all of the betterments to said property have been paid for out of the proceeds of the sale of oil produced from said premises now and at all times the property of this plaintiff, and plaintiff avers his willingness to pay to defendants or either of them any sum which the court shall find they have expended for his benefit which they have not already had repaid to them, and this plaintiff further denies that he is or ought to be estopped to have all of his contracts in and about this matter declared void and held for naught.

Wherefore, the plaintiff prays that he have a judgment and decree in this cause against this defendant as prayed for in plaintiff's petition filed herein, and that the court make all such orders and grant all such relief as the facts may warrant and the court shall in equity and good conscience deem proper.

P. C. WEST AND
BIDDISON & CAMPBELL,
Attorneys for Plaintiff.

186 STATE OF OKLAHOMA,
Tulsa County, ss:

Thomas Gilcrease, of lawful age, being first duly sworn, on his oath states, that he is the plaintiff in the above entitled cause; that he has read the above and foregoing reply to the separate answer of G. R. McCullough, and knows the contents thereof, and that the statements and things therein contained are true.

THOMAS GILCREASE.

Subscribed and sworn to before me this 29th day of July, 1912.
[SEAL.] W. V. BIDDISON,
Notary Public.

My com. Ex- 11/25/11—11-22-1915.

Endorsements: No. 3125. In the District Court of Tulsa County, Oklahoma. Thomas Gilcrease, Plaintiff, vs. G. R. McCullough et al., Defendant. Reply to Separate Answer of G. R. McCullough. District Court, State of Oklahoma, County of Tulsa. Filed Aug. 7, 1912. W. W. Stuckey, District Clerk. Biddison & Campbell, Attorneys for Plaintiff.

187 And thereupon, on the same day, to-wit: the 7th day of August, 1912, there was filed the reply of the plaintiff to the Separate Answer of the defendant, A. E. Bradshaw, which said reply is in the words and figures following, to-wit:

188 In the District Court of Tulsa County, State of Oklahoma.

No. 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. McCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Reply to Separate Answer of A. E. Bradshaw.

Comes now the plaintiff Thomas Gilcrease by his attorneys Biddison & Campbell and Preston C. West and for his reply to the separate answers of the defendant A. E. Bradshaw filed herein, states:

I.

The he denies all the allegations of said answer other than those allegations which admit the averments of plaintiff's petition.

II.

And for further reply to said answer, the plaintiff denies that he was enrolled by the Commission to the Five Civilized Tribes as of the age of nine years on the 8th day of February, 1899, and avers the truth and the fact to be that he was duly enrolled by said Commission as being nine years of age on the 9th day of June, *1911* and that by said rolls which are made conclusive evidence of his
189 age by the Act of Congress approved May 27, 1908, the plaintiff did not become twenty-one years of age and did not attain his majority so as to be legally capable of transacting his own affairs and dealing with his allotment until the 9th day of June, A. D. 1911.

III.

Further replying to said answer, the plaintiff denies that he had prior to February, 1909, conducted a store under his own management, and denies that in February, 1909, or at any other time there was ever made and entered any order or decree of the district court of Wagoner county or of any other court, whereby there was granted to plaintiff full right and authority to transact all his business with the same effect as if he had reached the age of twenty-one years or any authority whatsoever to transact any business, but states and shows to the court that the alleged and pretended order made by said

district court of Wagoner county was wholly without any jurisdiction in the premises, and that the alleged petition filed in said court was filed by the defendant, H. B. Martin, and that the plaintiff acted under the domination, control and influence of the said Martin, and that all that this plaintiff did in and about said matter was done upon the advice and direction of the said H. B. Martin and in full reliance upon said H. B. Martin both as to the legal aspects of the matter and as to the same being for the interest and advantage of this defendant; that neither the district court of Wagoner county nor any other county had any such jurisdiction as a matter of fact, and that the pretended proceedings in said court did not conform to the statute in force in the State of Oklahoma with reference to the removal of disabilities from minors, and that no court
190 could or did in February, 1909 or at any other time, confer upon the plaintiff, who was then a minor, any right or authority what-so-ever to transact his business as though of full age, and that the pretended order plead by the defendant is a nullity.

IV.

For further reply to said answer, the plaintiff states and shows to the court that it is not true as alleged in the answer of said defendant Bradshaw that prior to the execution of the pretended lease of August 24, 1909, this defendant did not consult and advise with the defendant H. B. Martin and not true that said defendant H. B. Martin had no knowledge of the negotiations pending between plaintiff and this defendant and the defendant McCullough until said Martin was called upon to write the contract already theretofore agreed upon; this plaintiff denies that said transactions were conducted on his part of his own free will and choice and upon his own initiative and with full knowledge as to the value of the interests involved in the transaction and the condition of the property and the law governing his rights, and denies that plaintiff had any knowledge or experience in the oil mining business, and denies that the said lease was not at the time of its execution of the market value of more than $17,000 bonus, and denies that plaintiff had prior to the execution thereof negotiated in the oil and gas mining lease market at and about the city of Tulsa for a long time endeavoring to effect a sale of said lease for the sum of $10,000 but was unable to find a sale thereof at said price until he succeeded in selling the same to the defendants Bradshaw and McCullough, and
191 denies that said lease was not worth to exceed $10,000, but states the truth and the fact to be that said lease was worth a bonus of several times that amount, and the plaintiff specially avers that for many months preceding the 24th day of August, 1909, plaintiff had applied for and received advice from H. B. Martin, one of the defendants herein, with reference to the policy to be pursued in his business transactions and the advisability of the various transactions into which he entered, and that he relied very largely upon the counsel and advice of said Martin, and this the said Martin as well as the other defendants herein well knew; and

that on the 24th day of August, 1909, this plaintiff was practically under the complete domination and control of said Martin and so continued for a long time thereafter and until within less than thirty days prior to the filing of the petition in this cause; and that the influence and domination of said Martin over the will of this plaintiff and this plaintiff's reliance upon said Martin not only as a legal adviser but as a friend and business counselor as well, was fully known not only to the said defendant Martin but to the defendants Bradshaw, McCullough and Brown, and all of said defendants relied upon said influence and used the same in furtherance of their unlawful purpose of obtaining plaintiff's property at less than its real value; and plaintiff avers the truth to be that there was a complete understanding between all of the defendants herein prior to the execution of said pretended lease of August 24, 1909.

V.

For further reply to said answer, the plaintiff denies that
192 the defendant A. E. Bradshaw was selected by plaintiff himself to be appointed as special guardian in manner and form as stated in defendant McCullough's answer, and not true as alleged in the separate answer of said defendant Bradshaw that the county court of Tulsa county was without jurisdiction to appoint A. E. Bradshaw guardian of the plaintiff; that in truth and in fact said county court of Tulsa county did have jurisdiction to appoint A. E. Bradshaw guardian of the plaintiff; that in truth and in fact said county court of Tulsa county did have jurisdiction and was the only court which had or could exercise any such jurisdiction, and that the previous guardianship pending in Muskogee county had long since been terminated and there was no guardian for plaintiff at the time of the appointment of A. E. Bradshaw, and that in all the matters in and about the appointment of said A. E. Bradshaw plaintiff relied implicitly upon the legal advice and business judgment of the defendant H. B. Martin, and that every act and step taken by the plaintiff in said matter was done under the direction of the said H. B. Martin, and none of said acts would have been done or steps taken but for the reliance of plaintiff upon the direction, counsel and advice of the defendant H. B. Martin both as to the legality thereof and as to their expediency.

VI.

For a further reply to said answer, the plaintiff denies that he proposed on or about the 8th day of February, 1911 to the defendant H. B. Martin and the defendant G. R. McCullough and this defendant, to enter into a contract of partnership for the purpose of equipping the premises involved in litigation in this suit for oil and gas
mining purposes and operating the same so long as oil, and
193 gas might be found upon said premises; and that it is not true that the plaintiff ever entered into any contract of copartnership with said defendants, but that the instrument of writing attached

to plaintiff's petition as Exhibit "D" and referred to in defendant's answer, was the only writing or contract entered into and that the same was entered into at the suggestion and instance of the defendant Martin and his co-defendants and while the domination and influence of said defendant Martin still continued and while the plaintiff was still under the complete influence and dominion of the said guardian as to all of the matters pertaining to his business, and that said contract was in truth, and in fact, as alleged in plaintiff's petition, but the culminating step in the conspiracy and design formed by the defendants to obtain from the plaintiff the property of the plaintiff for a mere fraction of its real value and to so use the influence of the defendant Martin over said plaintiff as to obtain for said Martin and his co-defendants a large interest in said property without the payment of any real consideration by them or either of them; and the plaintiff denies that said paper writing would constitute a contract of co-partnership even if it were a valid contract at all; and the plaintiff denies that he knew or understood what the relationship of — to the other defendants was or what his share in said contract was to be, or what part he was to play therein until just prior to the institution of this suit, and denies that he, the said plaintiff, was fully advised of the value of his lands and of the mines thereon, and of the necessary cost of equipping the same and the prob-
194 able profits arising from operation thereof; and denies that he was aware of all the laws, statutes and decisions of the courts bearing upon his right, title and interest in said lands; but states the truth and the fact to be that the only knowledge he had of his legal status and of the effect of the said several instruments executed by him was derived from the defendant H. B. Martin, and that each and every of the instruments under and by and through which the defendant Martin and his co-defendants claim in this cause were executed while the plaintiff was a minor and legally incapable of executing the same and while he was still under the influence and domination of the said defendant H. B. Martin and still relied implicitly upon his counsel and advice both as to the legal effect of said matters and as to the best business policy to be pursued by the plaintiff and the expediency of making and entering into said contract, and that the plaintiff's reliance upon said Martin and said Martin's influence over him were well known to each of the defendants herein.

VII.

For further reply to said answer, the plaintiff says that he has not kept the books pertaining to the lease involved in this controversy and has not been kept fully advised of the receipts and expenditures and is not now possessed of sufficient knowledge or information to either affirm or deny the allegations contained in the answers of this defendant with reference to the amount so expended. He admits that the defendants have entered into possession of the premises and that they are still in possession thereof and that so far as he knows, the operations conducted on said premises

195 have been properly conducted, but he denies that the value of said property has been enhanced thereby other than the value of the equipment placed thereon and states the truth and the fact to be that said lease would have been of the same value under the management of any competent person; and the plaintiff denies that he at any time after he became acquainted with the facts in regard to the transactions set out in his petition herein, accepted or received any benefits from this defendant or from any of his co-defendants growing out of said transactions, or done any other act that in equity will or ought to estop him to deny the validity of any and all of his said pretended leases, contracts, and agreements, but that each and every of said leases, contracts, agreements and writings were entered into by this plaintiff while he was still a minor and legally incapable of executing the same and while he was still under the domination of the defendant H. B. Martin and still relied implicitly upon the good faith of said H. B. Martin and upon his ability to advise him correctly as to his legal status and also to counsel him as to the business policy to be pursued and while he was still in ignorance of the true state of facts with reference to said matters and in ignorance of the truth with reference to the relations existing and subsisting between the defendant Bradshaw and his co-defendants herein.

VIII.

For further reply to said answer, the plaintiff denying the existence of any partnership contract and denying the existence of any valid contract whatever between this plaintiff and the defendants or
196 either of them, further denies that he has received or withdrawn in cash the sum of $25,293.45, all of which he still retains, and further denies that he has received any profits from said business since the commencement of this action, and denies that he has ever at any time received anything from the defendants or either of them with full knowledge of all the facts and circumstances and of his legal rights in the premises; that this plaintiff has received since February 11, 1908 from sales of oil taken from the property involved in this controversy approximately $20,000 but that said moneys so received by him were the proceeds of the sale of oil taken from the premises all of which belonged to the plaintiff, and that the defendants in this action have without right taken more than $50,000 of the proceeds of said oil and converted the same to their own use, and this plaintiff denies that he received in betterments to said property from the defendants, the sum of $100,000 or any other sum, but states the truth and the fact to be that all of the betterments to said property have been paid for out of the proceeds of the sale of oil produced from said premises now and at all times the property of this plaintiff, and plaintiff avers his willingness to pay to defendants or either of them any sum which the court shall find they have expended for his benefit which they have not already had repaid to them, and this plain-

tiff further denies that he is or ought to be estopped to have all of his contracts in and about this matter declared void and held for naught.

Wherefore, the plaintiff prays that he have a judgment and decree in this cause against this defendant as prayed for in
197 plaintiff's petition filed herein, and that the court make all such orders and grant all such relief as the facts may warrant and the court shall in equity and good conscience deem proper.

P. C. WEST AND
BIDDISON & CAMPBELL,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Tulsa County, ss:

Thomas Gilcrease, of lawful age, being first duly sworn, on his oath states:

That he is the plaintiff in the above entitled cause; that he has read the above and foregoing reply to the separate answer of the defendant, A. E. Bradshaw; knows the contents thereof, and that the statements therein contained are true.

THOMAS GILCREASE.

Subscribed and sworn to before me this 29th day of July, 1912.

[SEAL.] W. V. BIDDISON,
Notary Public.

My com. ex. 11-22-1915.

198 On the back of which Reply, appear the following endorsements, to-wit: No. 3125. In the District Court of Tulsa County, Oklahoma. Thomas Gilcrease, Plaintiff, vs. G. R. McCullough et al., Defendant-. Reply to Separate Answer of A. E. Bradshaw. District Court. State of Oklahoma, County of Tulsa. Filed Aug. 7, 1912. W. W. Stuckey, District Clerk. Biddison & Campbell, Attorneys for Plaintiff.

199 And thereupon, on the same day, to-wit: the 7th day of August, 1912, there was filed the reply of the plaintiff to the separate answer of the defendant Al Brown, which said Reply is in the words and figures following, to-wit:

200 STATE OF OKLAHOMA,
County of Tulsa, ss:

In the District Court.

No. 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. McCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Reply to Separate Answer of Al Brown.

Comes now the plaintiff Thomas Gilcrease by his attorneys, Biddison & Campbell and Preston C. West and for his reply to the separate answer of the defendant Al Brown filed herein, states:

I.

That he denies all the allegations of said answer other than those allegations which admit the averments of plaintiff's petition.

II.

And for further reply to said answer, the plaintiff denies that he was enrolled by the Commission to the five Civilized Tribes as of the age of nine years on the 8th day of February 1899, and avers the truth and the fact to be that he was duly enrolled by said Commission as being nine years of age on the 9th day of June, *1911*, and that by said rolls which are made conclusive evidence of his age by the Act of Congress approved May 27, 1908, the plaintiff did not become twenty-one years of age and did not attain his majority so as to be legally capable of transacting his own affairs and dealing
201 with his allotment until the 9th day of June, A. D. 1911.

Wherefore, the plaintiff prays that he have a judgment and decree in this cause against this defendant as prayed for in plaintiff's petition filed herein, and that the court make all such orders and grant all such relief as the facts may warrant and the court shall in equity and good conscience deem proper.

P. C. WEST AND
BIDDISON & CAMPBELL,
Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Tulsa County, ss:

Thomas Gilcrease, of lawful age, on his oath states: That he is the plaintiff in the above entitled cause; that he has read the above and foregoing reply to the separate answer of the defendant, Al Brown, and knows the contents thereof, and states that the statements therein contained are true.

THOMAS GILCREASE.

Subscribed and sworn to before me this 29th day of July, 1912.

[SEAL.] W. V. BIDDISON,
Notary Public.

My com. ex. 11-22-1915.

202–218 On the back of which reply appear the following endorsements, to-wit: No. 3125. In the District Court of Tulsa County, Oklahoma. Thomas Gilcrease, Plaintiff, vs. H. B. Martin et al., Defendant. Reply to separate answer of Al Brown. District Court, State of Oklahoma, County of Tulsa. Filed Aug. 7, 1912. W. W. Stuckey, District Clerk. Biddison & Campbell, Attorneys for Plaintiff.

* * * * * * *

219 In the District Court of Tulsa County, Oklahoma.

No. 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Application to Amend Answer.

Comes now H. B. Martin, one of the defendants in the above entitled cause, and requests leave to amend his separate answer in the above entitled cause by inserting immediately after the paragraph beginning "And defendant further answering says that plaintiff, Thomas Gilcrease, was not a person without education, business judgment and ability as alleged in said petition," and ending "on or about the — day of February, 1909, assumed the control of all his business affairs and has ever since conducted his business by his own efforts successfully," the following, to-wit:

At the time of executing the lease to G. R. McCullough in said petition set out and contained the said Thomas Gilcrease was more than eighteen years of age, and at the time of executing the working or partnership contract with the defendants, G. R. McCullough,

A. E. Bradshaw and H. B. Martin, in said petition set out and contained said Thomas Gilcrease was, in fact, twenty-one years of age, and being Creek Indian of one-eighth blood, all restrictions against the alienation, use and disposal of said land by the various treaties and acts of Congress in plaintiff's said petition set out, and all other acts of Congress, had been removed under and by virtue of
220 the express terms and provisions of the Act of May 27, 1908, and, so far as the laws of the United States of America are concerned, he had full right, power and authority to lease, or otherwise dispose of the same, and to execute the lease and working or partnership contract in said petition set out and contained, and at the time of executing each of said papers he was a married man, and his disabilities of non-age had prior to the execution of each of said instruments, been removed in accordance with the statute in such cases made and provided, as above stated, and by reason of all the above and foregoing facts he had a good and perfect right to execute said lease and the working or partnership contract in said petition set out and contained, and a good and perfect right to lease said lands as he did so lease them, or to otherwise dispose of the same; and such lease so made, and said working, drilling or partnership contract, were not violative of any provision of any treaty or agreement with the United States of America with the Creek (or Muskogee) Tribe or Nation of Indians, or any law of the United States governing or regulating the affairs of said Tribe or Nation of Indians, or regulating and controlling the disposition of the lands belonging to said Nation or Tribe, or any individual member thereof, and that by virtue of said Act of May 27, 1908, the said Thomas Gilcrease was given the same power, authority and right to deal with and lease, sell and dispose of, or otherwise to use said land as if, in fact, he were not of Indian blood and said land had never been subject to the rules and regulations of the Department of the Interior, and
221 as if no restrictions against the alienation thereof, or the power of Thomas Gilcrease to deal with, control and manage the same, had ever been imposed thereon, or on the said Thomas Gilcrease, and said Act of Congress of May 27, 1908 repeals Sec. 17 of the Supplemental Agreement, and Sec. 4 of the Original Creek Agreement, and Sections 1 and 2 of the Act of Congress of April 28, 1904, and Sections 19 and 20 of the Act of Congress of April 26, 1906, set out in the plaintiff's petition herein, in so far as said treaties and acts of Congress affect or control the lands set out and described in the petition herein, or constitute a restriction against the alienation or other disposal of said land.

STUART, CRUCE & CRUCE,
H. B. MARTIN,
Attorneys for Defendants.

Endorsements: Number 3125. Thomas Gilcrease, Plaintiff, vs. G. R. McCullough et al., Defendants. Application to Amend answer. District Court, State of Oklahoma, county of Tulsa. Filed Apr. 3, 1913. In open court. W. W. Stuckey, Clerk.

222 And thereupon, on the same day, to-wit: the 3d day of April, 1913, there was filed the Application of the defendant G. R. McCullough to amend his separate answer filed herein, which said application is in the words and figures following, to-wit:

223 In the District Court of Tulsa County, Oklahoma.

Number 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. McCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Application to Amend Answer.

Comes now G. R. McCullough, one of the defendants in the above entitled cause, and requests leave to amend his separate answer in the above entitled cause by inserting immediately after the paragraph beginning "And defendant further answering says that plaintiff, Thomas Gilcrease, was not a person without education, business judgment and ability as alleged in said petition," and ending "On or about the — day of February, 1909, assumed the control of all of his business affairs and has ever since conducted his business by his own efforts successfully," the following, to-wit:

At the time of executing the lease to G. R. McCullough in said petition set out and contained, the said Thomas Gilcrease was more than eighteen years of age, and at the time of executing the working or partnership contract with the defendants, G. R. McCullough, A. E. Bradshaw and H. B. Martin, in said petition set out and contained said Thomas Gilcrease was, in fact, twenty-one years of age, and, being a Creek Indian of one-eighth blood, all restrictions
224 against the alienation, use and disposal of said land by the various treaties and acts of Congress in plaintiff's said petition set out, and all other acts of Congress, had been removed under and by virtue of the express terms and provisions of the Act of May 27, 1908, and, so far as the laws of the United States of America are concerned, he had full right, power and authority to lease, or otherwise dispose of the same, and to execute the lease and working or partnership contract in said petition set out and contained, and at the time of executing each of said papers he was a married man, and his disabilities of non-age had, prior to the execution of each of said instruments, been removed in accordance with the statute in such cases made and provided, as above stated, and by reason of all the above and foregoing facts he had a good and perfect right to execute said lease and the working or partnership contract in said petition set out and contained, and a good and perfect right to lease said lands as he did so lease them, or to otherwise dispose of the same; and such lease so made, and said working drilling or partnership contract, were not violative of any provision of any treaty or agreement with

the United States of America, with the Creek (or Muskogee) Tribe or Nation of Indians, or any law of the United States governing or regulating the affairs of said Tribe or Nation of Indians, or regulating and controlling the disposition of the lands belonging to said Nation or Tribe, or any individual member thereof, and that by virtue of said act of May 27th, 1908, the said Thomas Gilcrease was given the same power, authority and right to deal with and
225 lease, sell and dispose of, or otherwise to use said land as if, in fact, he were not of Indian blood and said land had never been subject to the rules and regulations of the Department of the Interior, and as if no restrictions against the alienation thereof, or the power of Thomas Gilcrease to deal with, control and manage the same, had ever been imposed thereon, or on the said Thomas Gilcrease, and said Act of Congress of May 27, 1908, repeals Sec. 17 of the Supplemental Agreement, and Sec. 4 of the Original Creek Agreement, and Sections 1 and 2 of the Act of Congress of April 28, 1904, and Sections 19 and 20 of the Act of Congress of April 26, 1906, set out in the plaintiff's petition herein, in so far as said treaties and acts of Congress affect or control the lands set out and described in the petition herein, or constitute a restriction against the alienation or other disposal of said land.

STUART, CRUCE AND CRUCE,
H. B. MARTIN,
Attorneys for Defendants.

Endorsements: Number 3125. Thomas Gilcrease, Plaintiff, vs. G. R. McCullough et al., Defendants. Application to Amend Answer. District Court, State of Oklahoma, County of Tulsa. Filed Apr. 3, 1913. In Open Court. W. W. Stuckey, Clerk.

226 And thereupon, on the same day, to-wit: the 3d day of April, 1913, there was filed the application of the defendant, A. E. Bradshaw to amend his separate answer filed herein which said Application is in the words and figures following, to-wit:

227 In the District Court of Tulsa County, Oklahoma.

Number 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants.

Application to Amend Answer.

Comes now A. F. Bradshaw, one of the defendants in the above entitled cause, and requests leave to amend his separate answer in the above entitled cause by inserting immediately after the paragraph

beginning "And defendant further answering says that plaintiff, Thomas Gilcrease, was not a person without education, business judgment and ability as alleged in said petition," and ending "on or about the — day of February, 1909, assumed the control of all of his business affairs and has ever since conducted his business by his own efforts successfully" the following, to-wit:

At the time of executing the lease to G. R. McCullough in said petition set out and contained the said Thomas Gilcrease was more than eighteen years of age, and at the time of executing the working or partnership contract with the defendants, G. R. McCullough, A. E. Bradshaw and H. B. Martin, in said petition set out and contained said Thomas Gilcrease was, in fact, twenty-one years
228 ago, and being a Creek Indian of one-eighth blood, all restrictions against the alienation, use and disposal of said land by the various treaties and acts of Congress in plaintiff's said petition set out, and all other acts of Congress, had been removed under and by virtue of the express terms and provisions of the Act of May 27, 1908, and, so far as the laws of the United States of America are concerned, he had full right, power and authority to lease, or otherwise dispose of the same, and to execute the lease and working or partnership contract in said petition set out and contained, and at the time of executing each of said papers he was a married man, and his disabilities of non-age had, prior to the execution of each of said instruments, been removed in accordance with the statute in such cases made and provided, as above stated and by reason of all the above and foregoing facts he had a good and perfect right to execute said lease and the working or partnership contract in said petition set out and contained, and a good and perfect right to lease said lands as he did so lease them, or to otherwise dispose of the same; and such lease so made, and said working, drilling or partnership contract, were not violative of any provisions of any treaty with the United States of America with the Creek (or Muskogee) Tribe or Nation of Indians, or any law of the United States governing or regulating the affairs of said Tribe or Nation of In-
229 dians, or regulating and controlling the disposition of the lands belonging to said Nation or Tribe, or any individual member thereof, and that by virtue of said Act of May 27, 1908, the said Thomas Gilcrease was given the same power, authority and right to deal with and lease, sell and dispose of, or otherwise to use said land as if, in fact, he were not of Indian blood and said land had never been subject to the rules and regulations of the Department of the Interior, and as if no restrictions against the alienation thereof, or the power of Thomas Gilcrease to deal with, control and manage the same, had ever been imposed thereon, or on the said Thomas Gilcrease, and said Act of Congress of May 27, 1908, repeals Sec. 17 of the Supplemental Agreement, and Sec. 4 of the original Creek Agreement and Sections 1 and 2 of the Act of Congress of April 28, 1904, and Sections 19 and 20 of the Act of Congress of April 26, 1906, set out in the plaintiff's petition herein, in so far as said treaties and acts of Congress affect or control the lands set out and described in the

petition herein, or constitute a restriction against the alienation or other disposal of said land.

STUART, CRUCE & CRUCE,
H. B. MARTIN,
Attorneys for Defendants.

230 & 231 On the back of which application to amend answer appears the following endorsements, to-wit: Number 3125. Thomas Gilcrease, Plaintiff, vs. G. R. McCullough et al., Defendants. Application to Amend Petition. District Court, State of Oklahoma, County of Tulsa. Filed Apr. 3, 1913. In Open Court. W. W. Stuckey, Clerk.

* * * * * * *

232–268 No. 3125.

THOMAS GILCREASE, Plaintiff,

vs.

G. R. MCCULLOUGH et al., Defendants.

Now upon application the defendants herein are by the court given leave to amend answer instanter in certain particulars as is set out in application of defendants duly filed.

* * * * * * *

269 By the Court: Call your witnesses.

By Mr. West: Plaintiff desires to introduce a certified copy of the enrollment of the plaintiff Thomas Gilcrease showing his age and degree of blood.

By Judge Diggs: To which we object as incompetent, irrelevant and immaterial, and for the further reason that the same is not certified to as required by law or by the officer having in charge the rolls of the Five Civilized Tribes.

By Mr. Biddison: The general objection of incompetency we ask to be made specific under the statute, in what particular it is incompetent other than that.

By Judge Diggs: We say it is incompetent for the reason it is not signed by an officer or properly certified by an officer having charge of the records, that the handwriting of Mr. Wright or the clerk signing it has not been identified, that the officer having charge and control of the original records of the Five Civilized Tribes is the Secretary of the Interior or the Indian Commissioner at Washington.

270 Mr. Biddison: That becomes a question of law and is determined by the fact that the Commissioner to the Five Civilized Tribes has the official custody of the original rolls.

Mr. West: And J. George Wright is the successor by operation of law to the original commission consisting of four people.

Mr. Cruce: We are required to set out our entire objection now, are we?

Mr. Biddison: That is the demand of the plaintiff under the statute.

Mr. Cruce: Our objection to the competency is that the record does not show the age of this man; the further objection is it is incompetent for the reason it is not the character of testimony or character of records of the Dawes Commission by which you can prove the age; it is the kind of testimony to prove the degree of blood but not the age.

The Court: Proceed with the rest of the testimony, I will reserve my ruling on that; I have some doubt about it.

Mr. West: I now offer in evidence the original patent or allotment deed to the surplus portion, 120 acres, of the land in question, executed by P. Porter as principal chief of the Creek Nation, approved by Thomas Ryan, Acting Secretary of the Interior.

The Court: How much does that cover?

Mr. West: 120 acres.

271 Mr. Biddison: What is known as the surplus over and above the forty acres of the homestead.

Which said patent was marked Plaintiff's Exhibit B., and is in the words and figures following, to-wit:

272 PL'FF'S EX. B. 3125.

Allotment Deed.

Creek Indian Roll No. 1505.

Muskogee (Creek) Nation,

Indian Territory.

To all whom these presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats. 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, it was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Thomas Gilcrease, a citizen of said tribe, as an allotment, exclusive of a forty acre homestead, as aforesaid,

Now, therefore, I, The undersigned, the Principal Chief of the

Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Thomas Gilcrease all right, title and interest of the Muskogee (Creek) Nation and of all other citi-
273 zens of said Nation in and to the following described land, viz:

The South Half of the Northwest Quarter, and the Northeast Quarter of the Southwest Quarter of Section Twenty-two (22) Township Seventeen (17) North, and Range Twelve (12) East of the Indian Base and Meridian, in Indian Territory, containing One Hundred and Twenty (120) acres, more or less, as the case may be, according to the United States Survey thereof, subject, however, to all provisions of said Act of Congress relating to appraisement and valuation, and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 25th day of August, 1902.

[SEAL.] P. PORTER,
Principal Chief of the Muskogee (Creek) Nation.

L. R. S.

Department of the Interior.

Approved December 15, 1902.
THOMAS RYAN,
Acting Secretary.

Endorsements: 51544. Indian Office Incl. No. 279, 1902. Department of the Interior. Nov. 29, 1902. Returned with No. —.
Inclosure Ind. Ter. Div. B. Commission No. 1283. Al-
274 lotment Deed. Muskogee (Creek) Nation to Thomas Gilcrease. Filed for record on the 24 day of December, 1902, at 1 o'clock P. M., and recorded in Book 2 Page 35. Commission to the Five Civilized Tribes. Tams Bixby, Acting Chairman. File No. 635.

275 Mr. West: Plaintiff offers a similar patent to the forty acre or homestead tract, being the remainder of the land in question, identified as Exhibit C.

Which said patent so offered and received in evidence is in the words and figures following, to-wit:

276 PL'F'S EX. C. 3125.

Homestead Deed.

Creek Indian Ro. No. 1505.

The Muskogee (Creek) Nation,

Indian Territory.

To all whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved March 1, 1901, (31 Stats. 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, it was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Thomas Gilcrease, a citizen of said tribe, as a homestead.

277 Now therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Thomas Gilcrease all right, title, and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz:

The North West Quarter of the South West Quarter of Section Twenty-two (22), Township Seventeen (17) North, and Range Twelve (12) East,

of the Indian Base and Meridian, in Indian Territory, containing Forty (40) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to the conditions provided by said Act of Congress and which conditions are that said land shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also to provisions of said Act of Congress relating to the use devise and descent of said land after the death of the said Thomas Gilcrease and subject also to all provisions of said Act of Congress relating to appraisement and valuation, and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 25th day of August, 1902.

278 P. PORTER,
Principal Chief of the Muskogee (Creek) Nation.

L. R. S.

Department of the Interior.

Approved December 15, 1902.
[SEAL.] THOS. RYAN,
Acting Secretary.

Endorsements: Indian Office. 51544. 1902. Incl. No. 278. Department of the Interior Nov. 29, 1902. Returned with No. — Inclosure Ind. Ter. Div. C. Commission No. 1282. Homestead Deed. Muskogee (Creek) Nation to Thomas Gilcrease. Filed for record on the 24 day of December 1902, at 1 o'clock P. M. and recorded in Book B. page 35. Commission to the Five Civilized Tribes. Tams Bixby, Acting Chairman. File No. 635.

279 Mr. West: We offer in evidence the copy of the contract of August 24, 1909, attached to the original petition in this case, No objection being made to the use of the copy that is attached to the bill instead of the original contract itself.

Which said copy so offered and received in evidence was marked Plaintiff's Exhibit D., and is in the words and figures following, to-wit:

280 EXHIBIT *A*.

Oil and Gas Mining Lease.

This agreement, made this 24th day of August, 1909, by and between Thomas Gilcrease, Party of the first part, and Grant R. McCullough, party of the second part,

Witnesseth: That the said party of the first part. for and in consideration of the sum of Seventeen Thousand ($17,000.00) Dollars, the receipt of which is hereby acknowledged, and for the further consideration of the rents, covenants and agreements hereinafter provided, has granted, demised, let and leased and does by these presents grant, demise, let and lease unto the party of the second part, his heirs, successors and assigns all the oil and gas in and under that certain tract of land hereinafter described and also all the said tract of land hereinafter described for the purpose and with the exclusive right of drilling and operating thereon for said oil and gas, both as to wells now opened and operated upon said land as to all wells which may hereafter be drilled, opened and operated thereon, which said tract of land is situated in Tulsa county, State of Oklahoma, and described as follows, to-wit:

The South Half (½) of the Northwest Quarter (¼) and the

North Half (½) of the Southwest Quarter (¼) of Section Twenty-Two (22), Township Seventeen (17) North of Range Twelve (12) East of the Indian Meridian, containing 160 acres.

The said party of the first part grants the further privilege unto the party of the second part, his heirs, successors and assigns of using sufficient water and gas from the premises necessary to the operations thereon and all rights and privileges necessary or
281 convenient for conducting said operations and the transportation of oil and gas, and the right to remove at any time, machinery or fixtures placed on the premises by said party of the second part.

To have and to hold the same unto the said party of the second part, his heirs, successors and assigns, for the term of fifteen years and as long thereafter as oil or gas is being produced therefrom by said party of the second part, his heirs, successors or assigns. The terms of this lease to begin at the time of the expiration or cancellation of a certain lease of said premises heretofore executed by William L. Gilcrease, as guardian of Thoias Gilcrease, to William H. Milliken, and the said term of this lease shall run for fifteen years thereafter and as long thereafter as oil and gas *is* being produced as aforesaid.

In consideration whereof the said party of the second part agrees to deliver to the party of the first part, in tanks or pipe lines, the one eighth (1/8) part of all oil produced and saved from the leased premises. And should gas be found on said premises in paying quantities, said party of the second part agrees to pay One Hundred ($100.00) Dollars yearly, for the product of each gas well while the same is being sold off the premises, but the party of the second part shall have the right to use sufficient gas, oil and water to drill all wells and for all purposes necessary or convenient in operating the same.

All rentals and other payments may be made directly to the party of the first part or may be deposited to his credit at the Bank of Oklahoma in the city of Tulsa.

All the conditions and terms of this grant and lease shall
282 extend to and be binding upon the heirs, successors and assigns of the parties hereto.

In witness whereof, we have hereunto set our hands this 24th day of August, 1909.

THOS. GILCREASE,
Party of the First Part.
GRANT R. McCULLOUGH,
Party of the Second Part.

283 STATE OF OKLAHOMA,
County of Tulsa, ss:

On this 24th day of August, 1909, before me, A. B. Davis, a Notary Public in and for said county and State, personally appeared Thomas Gilcrease, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to

me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein named.

Witness my hand and official seal, this 24th day of August, 1909.

[SEAL.] A. B. DAVIS,
Notary Public.

My commission expires November 26, 1911.

Filed for record in Tulsa, Okla., Aug. 25, 1909, at 4 o'clock P. M.

[SEAL.] H. C. WALKLEY,
Register of Deeds.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, H. C. Walkley, Register of Deeds in and for the county and State above named, do hereby certify that the foregoing is true and correct copy of a like instrument now of record in my office and recorded in Book 70, page 11.

Dated the 19th day of Feb. 1912.

H. C. WALKLEY,
Register of Deeds.

284 And thereupon court took an adjournment until this afternoon at one-thirty.

Thursday, April 3d, 1913—1:30 p. m.

Court met pursuant to adjournment.

Present: Same as before.

Mr. Biddison: With reference to the roll card that was introduced this morning.

The Court: I will let it go in for what it is worth.

Objection overruled.

Judge Diggs: Exception.

Which said Exhibit A., so offered and received in evidence is in the words and figures following, to-wit:

285–293 PL'FF'S EX. A. 3125.

Department of the Interior,

Commissioner to the Five Civilized Tribes.

Creek Roll, Citizens by Blood.

Number.	Name.	Age.	Sex.	Blood.	Card No.
1505	Gilcrease, Thomas (Age Nine)	9	M.	1/8	456

This is to certify, that I am the officer having custody of the approved roll of Creek citizens by blood of the Creek Nation and that

the above and foregoing is a true and correct copy of that portion of said roll appearing at Number 1505 enrolled as of June 9, 1899. P. O. Leonard, Oklahoma.

J. B. WRIGHT,
Commissioner to the Five Civilized Tribes,
By T. C. HUMPHRY, JR.,
Clerk in Charge of Creek Records.

C. H. DREW, *Clerk.*

Muskogee, Oklahoma, February 3, 1912.

* * * * * * *

294 Mr. West: Plaintiff now offers in evidence lease from Lizzie Gilcrease to Grant R. McCullough, that is to say, the copy of that lease attached to the petition filed in this case, the same having been executed on the 4th day of September, 1909.

The Court: No objection being made on account of it being a copy?

Judge Diggs: No, sir.

The Court: In introducing these documents, is there any thing as you go along that you desire to call to the attention of the court, any of the language or any part of it particularly?

Mr. West: This lease, is, as I stated to your Honor this morning, an adoption, as we understand it, of the lease already made by the boy to these people, the legal title at that time standing in the name of his mother.

Which said lease so offered and received in evidence is in the words and figures following to-wit:

295 EXHIBIT B.

Oil and Gas Mining Lease.

This indenture, made and entered into on the 4th day of September, 1909, by and between Lizzie Gilcrease, party of the first part, and Grant R. McCullough, party of the second part,

Witnesseth: That said party of the first part, for and in consideration of the sum of One ($1.00) Dollar, and other good and valuable considerations, the receipt of which is hereby acknowledged and for the further consideration of the rents, covenants and agreements hereinafter provided, has granted, demised, let and leased, and does by these presents, grant, demise, let and lease unto the party of the second part, his heirs, successors and assigns, all the oil and gas in and under the said tract of land hereinafter described, for the purpose and with the exclusive right of drilling and operating thereon for said oil and gas, both as to wells now opened and operated upon said land and as to all wells which may hereafter be drilled, opened and operated thereon, which said tract of land is situated in Tulsa county, State of Oklahoma, and described as follows, to-wit:

The South One-half (½) of the Northwest Quarter (¼) and the North One-half (½) of the Southwest Quarter (¼) of Section

Twenty-two (22) Township Seventeen (17) North, Range Twelve (12) East of the Indian Base and meridian, containing one hundred and sixty (160) acres more or less.

The said party of the first part grants the further right and privilege unto the party of the second part, his heirs, successors and assigns, of using sufficient water and gas from the premises
296 necessary to the operation thereon, and all rights and privileges necessary or convenient for conducting said operations and the transportation of oil and gas, and the right to remove at any time, machinery or fixtures placed on the premises by the said party of the Second Part.

To have and to hold the same unto the said party of the second part, his heirs, successors and assigns, for the term of Fifteen (15) years, and as long thereafter as oil or gas is being produced therefrom by said party of the second part, his heirs, successors or assigns. The term of this lease to begin at the expiration or cancellation of a certain lease of said premises heretofore executed by William L. Gilcrease, as guardian of Thomas Gilcrease, to William H. Millikin, and the said term of this lease shall run for fifteen (15) years and as long thereafter as oil or gas is being produced as aforesaid.

The consideration named in a certain lease upon the aforesaid lands heretofore executed on the 24th day of August 1909 by Thomas Gilcrease, to the said Grant R. McCullough, consisting of a bonus of Seventeen Thousand ($17,000.00) dollars, and a royalty of one-eighth (1/8) of the oil to be produced from said land as a part of the consideration of this lease: And the said party of the first part, Lizzie Gilcrease, hereby adopts, ratifies and confirms the said lease from Thomas Gilcrease to the said Grant R. McCullough.

All conditions and terms of this grant and lease shall extend to and be binding upon the heirs, successors and assigns of the parties hereto.

In witness whereof, we have hereunto set our hands this
297 4th day of September, 1909.

LIZZIE GILCREASE,
Party of the First Part.
GRANT R. McCULLOUGH,
Party of the Second Part.

STATE OF OKLAHOMA,
County of Tulsa, ss:

On this 4th day of September, 1909, before me, a Notary Public in and for said county and State, personally appeared Lizzie Gilcrease to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed, for the uses and purposes therein named.

Witness my hand and official seal this 4th day of September, 1909.
[SEAL.] C. W. GILLETT,
Notary Public.

My Commission expires April 12, 1912.

Filed for record at Tulsa, Okla., Sep. 7, 1909 at 10:50 o'clock A. M.

[SEAL.]

H. C. WALKLEY,
Register of Deeds.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I, H. C. Walkley, register of deeds, in and for the county and State above named, do hereby certify that the foregoing is a true and correct copy of a like instrument now of record in my office and recorded in book 70 page 168.

Dated the 14 day of Feb. 1912.

[SEAL.]

H. C. WALKLEY,
Register of Deeds.

298 Mr. West: Plaintiff now desires to offer in evidence copy of the deed of September 18, 1908 from Thomas Gilcrease to Lizzie Gilcrease for the land involved in this controversy.

Which said deed so offered and received in evidence is in the words and figures following, to-wit:

299 PL'F'S EX. E. 3125.

Warranty Deed.

Know all men by these presents: That Thomas Gilcrease of Wealaka, Oklahoma, party of the first part, in consideration of the sum of Five Thousand (5000) Dollars ($5,000.00) in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto Lizzie Gilcrease, of Wealaka, Oklahoma, the following described real property and premises, situated in Creek county, State of Oklahoma, to wit:

The South half of the northwest Quarter and the north half of the southwest quarter of Section Twenty-two (22), Township Seventeen (17) North, Range Twelve (12) East of the Indian Base and Meridian.

This deed is made subject to an oil and gas mining lease executed by William L. Gilcrease, as guardian of the grantor herein, to W. H. Milliken as lessee, and it is expressly understood and agreed that all royalties arising under said lease from the production of oil and gas on said land are reserved to said Thomas Gilcrease, the grantor in this deed, and shall be paid to him together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said party of the second part, her heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judg-
300 ments, mortgages and other liens and encumbrances of whatsoever nature.

Signed and delivered this 18th day of September, 1908.

THOMAS GILCREASE. [SEAL.]

Acknowledgment.

STATE OF OKLAHOMA,
Muskogee County, ss:

Before me, a Notary Public in and for said county and State, on this 18th day of September, 1908, personally appeared Thomas Gilcrease to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and seal as such notary public on the day last above mentioned.

GARFIELD JOHNSON,
Notary Public.

My commission expires December 28, 1909.

301 Endorsements: Warranty Deed. Thomas Gilcrease, Wealaka, Okla., to Lizzie Gilcrease, Wealaka, Okla.

302 Mr. West: Plaintiff now offers a declaration of trust attached to the copy of the deed just put in evidence stating that she holds the same for Thomas Gilcrease.

Judge Diggs: To which we object as incompetent, irrelevant and immaterial, its execution not proven.

Mr. West: I will admit, Your Honor, its execution is not proven at this time; if they will call for formal proof of that I will have to withdraw it. I will withdraw that offer at this time.

Plaintiff now offers in evidence the assignment of a one-fourth interest in the oil and gas mining lease of the 24th of August, 1909, from Gilcrease to McCullough, the assignment now offered being dated the 22d day of October, 1910, and purporting to assign a one-fourth interest in the lease of August 24th, 1909, from McCullough back to Gilcrease.

Which said assignment so offered and received in evidence is in the words and figures following, to-wit:

303 PL'F'S EX. F. 3125.

Assignment of Oil and Gas Mining Lease.

Know all men by these presents:

That I, Grant R. McCullough, in consideration of the sum of fifteen thousand ($15,000.00) Dollars, to me in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, trans-

ferred and set over, and by these presents do sell, assign, transfer and set over unto W. T. Gilcrease of the city of Tulsa, Oklahoma, his heirs, successors and assigns, to his proper use and benefit, the undivided one-fourth (¼) interest in and to a certain indenture of lease, dated the 24th day of August, 1909, made by Thomas Gilcrease to me, the said Grant R. McCullough, and the undivided one-fourth of my interest in and to a certain indenture of lease, dated the 4th day of September, 1909, made by Lizzie Gilcrease, to me, the said Grant R. McCullough; that is to say, a certain oil and gas mining lease executed as aforesaid by the said Thomas Gilcrease to the said Grant R. McCullough upon the following described lands, to-wit:

The South Half (½) of the Northwest Quarter (¼) and the North Half (½) of the Southwest Quarter (¼) of Section Twenty-two (22) Township Seventeen (17) North of Range Twelve (12) East of the Indian Meridian, containing One Hundred and Sixty acres, more or less;

lying, situate and being in the county of Tulsa and state of Oklahoma. And a certain oil and gas mining lease executed as aforesaid by the said Lizzie Gilcrease to the said Grant R. McCullough
304 upon the aforesaid tract of land.

To have and to hold the same unto the said W. T. Gilcrease his heirs, successors and assigns, for and during all of the terms of the said lease defined therein, to-wit: the period of fifteen (15) years, and as long thereafter as oil and gas may be produced, to begin upon the cancellation or expiration of a certain oil and gas mining lease hereto fore executed by William L. Gilcrease, as guardian of Thomas Gilcrease, to William H. Millikin, upon said land.

In witness whereof, I have hereunto set my hand on this 22nd day of October, 1910.

GRANT R. McCULLOUGH, *Grantor.*

STATE OF OKLAHOMA,
County of Tulsa, ss:

On this 22nd day of October, 1910, before me, Roscoe Adams, a Notary Public in and for said county and State, personally appeared Grant R. McCullough, to me known to be the identical person who executed the foregoing indenture of assignment, and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein named.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on this 22nd day of October, 1910.

[SEAL.] ROSCOE ADAMS,
Notary Public.

My commission expires June 6, 1914.

305 Endorsements: F. Grant R. McCullough to W. T. Gilcrease. Assignment of Oil and Gas Mining Lease.

306 Mr. West: I would like the record to show defendants admit in open court that on the same date as the assignment from McCullough to Gilcrease of a one fourth interest, McCullough also executed a like assignment to the defendant H. B. Martin of a one-fourth interest.

Mr. Martin: That is admitted.

Mr. West (continuing): Of the lease of August 24, 1909, being in substantially the same terms and for a like consideration,—purporting to be for a like consideration. Plaintiff now offers in evidence a copy of the assignment executed by H. B. Martin to Thomas Gilcrease of December 11th, 1911, of an undivided three fourths of all his right, title and interest in and under the lease of August 24, 1909, from Gilcrease to McCullough. Any objection to that?

Mr. Martin: No.

Which said copy of assignment so offered and received in evidence is in the words and figures following to-wit:

307 EXHIBIT E.

Know all men by these presents:

That for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the undersigned H. B. Martin, has bargained, sold released and assigned, and does by these presents bargain, sell, release and assign unto Thomas Gilcrease, of Tulsa, Oklahoma, his heirs, administrators and assigns, an undivided three-fourths (¾) of all the rights, title and interest derived, had and held by the said H. B. Martin in and to the oil and gas mining right upon the following described real property, to-wit:

The South one-half (S./2) of the Northwest Quarter (N. W./4) and the North One-half (N./2) of the Southwest Quarter (S. W./4) of Section Twenty-two (22), Township Seventeen (17) North, Range Twelve (12) East of the Indian Meridian, in the county of Tulsa and State of Oklahoma, under and by virtue of a certain contract of mining lease executed between the said Thomas Gilcrease, G. R. McCullough and the said H. B. Martin, on the 8th day of February, 1911; it being the intent of this assignment to convey to the said Thomas Gilcrease all rights, title, interest and privilege of the said H. B. Martin in the aforesaid contract of lease so far as the same affects the said undivided three-fourths interest of the said H. B. Martin.

It is further covenanted and contracted that the assignee, Thomas Gilcrease, assumes all obligations of the said H. B. Martin as to the said three-fourths interest, as to the expense of operating and equipping said leased premises.

308 In Witness whereof, I have hereunto set my hand, this 11th day of December, 1911.

(Signed) H. B. MARTIN.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Guy L. Reed, a Notary Public within and for said county and State on this 11th day of December, 1911, personally appeared H. B. Martin, to me known to be the identical person who executed the above and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

[SEAL.] GUY L. REED,
Notary Public.

My Commission expires Aug. 21, 1912.

309 Mr. West: Plaintiff now offers in evidence copy of the contract of February 8th, 1911, entered into between Thomas Gilcrease, the plaintiff, G. R. McCullough and H. B. Martin, two of the defendants in this cause, the copy offered being attached to the original petition on file in this case.

Which said contract so offered and received in evidence is in the words and figures following, to-wit:

310 *Contract.*

This indenture, made and entered into this 8th day of February, 1911, by and between Thomas Gilcrease, G. R. McCullough and H. B. Martin,

Witnesseth: That for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto contract and agree that the said Thomas Gilcrease, G. R. McCullough and H. B. Martin, their respective heirs, administrators and assigns, shall have and hold, in the proportions hereinafter described, the exclusive right to mine oil and gas from and upon the premises hereinafter described, to-wit:

The South one-half (½) of the Northwest Quarter (¼) and the North one-half (½) of the Southwest Quarter (¼) of Section Twenty-two (22) Township Seventeen (17) North, Range Twelve (12) East of the Indian Meridian, in the county of Tulsa, and State of Oklahoma, as long as oil and gas, or either of them, are found upon said premises in paying quantities.

The said Thomas Gilcrease shall receive as royalty for said leases premises, one eighth (⅛) of all the oil mined and saved upon said premises, delivered in pipe line, and such royalty shall be paid at any time after the sale of such oil, upon demand of the said Thomas Gilcrease. And in addition to said royalty, the said Thomas Gilcrease, his heirs, executors and assigns, shall have and hold an undivided one-fourth (¼) of the leasehold interest in said property; the said G. R. McCullough, his heirs, administrators and as-
311 signs, shall have and hold an undivided one-half (½) of the leasehold interest in said land; and the said H. B. Mar-

tin, his heirs, administrators and assigns, shall have and hold an undivided one-fourth (¼) of the leasehold interest in said land.

And it is further contracted, covenanted and agreed that the parties hereto, their heirs, administrators and assigns, shall operate said lease for oil mining purposes from this date as long as oil and gas is found thereon in paying quantities, and that after the payment of the royalty hereinbefore provided for to the said Thomas Gilcrease, that all of the balance of the proceeds of the oil produced from said leased premises, less necessary operating expenses, shall be applied to the payment of the cost of equipment of said lease until such equipment shall have been fully paid for out of said proceeds.

And it is further contracted, covenanted and agreed that the equipment now upon said leased premises, and hereafter to be placed upon said leased premises, shall be and remain the personal property of the said Thomas Gilcrease, G. R. McCullough and H. B. Martin, their heirs, executors, and assigns, in the proportion of the interests of said parties in said leasehold, as evidenced by this contract.

And it is further covenanted, contracted and agreed that the said parties shall not remove any of said equipment, including powers, engines, tanks, lead pipes, houses, tubing, rods, casing, or any other portion of said equipment from any wells upon said leased
312 premises, as long as oil is produced from said wells in paying quantities, but that when such wells shall become exhausted and no longer produce oil in paying quantities, then such equipment may be removed by said parties hereto, their heirs, administrators and assigns.

And it is further covenanted and contracted that the expense of operation of said leased premises for mining purposes shall be paid by the parties hereto in the proportion of their respective interests as hereinbefore described, except that the royalty interest of the said Thomas Gilcrease shall not be liable for any of the expense of the equipment or operation of said lease, and shall be free from any expense whatever.

In witness whereof, We have hereunto set out hands this 8th day of February, 1911.

THOMAS, GILCREASE.
G. R. McCULLOUGH.
H. B. MARTIN.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Benjamin C. Connor, a Notary Public in and for said County and State on this 8th day of February, 1911, personally appeared Thomas Gilcrease, G. R. McCullough and H. B. Martin, to me known to be the identical persons who executed the foregoing instrument, and acknowledged to me, each for himself, that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

[SEAL.] BENJAMIN C. CONNOR.

My commission expires March 29, 1911.

313 Mr. West: Plaintiff now offers in evidence contract of employment as attorney entered into between Thomas Gilcrease and H. B. Martin on the 21st day of April, 1910.

Which said contract so offered and received in evidence, is in the words and figures following, to-wit:

314 PL'F'S EX. G. 3125.

Contract.

This contract, made and entered into on this 21st day of April, 1910, by and between Thomas Gilcrease, party of the first part and H. B. Martin, party of the second part.

Witnesseth: That this contract is made to take the place of and supersede a certain contract heretofore entered into on the 1st day of February, 1909, by and between Thomas Gilcrease and the firm of Hainer & Martin, and

It is contracted and agreed that the said H. B. Martin will take charge of and prosecute to the best of his skill and ability certain actions now pending as follows, to-wit:

A certain action in which the said Thomas Gilcrease is plaintiff and George C. Butte et al. are defendants now pending in the district court of Muskogee county, State of Oklahoma, and a certain other action in which the said Thomas Gilcrease is plaintiff and one William H. Millikin is defendant, now pending in the district court of Tulsa county, State of Oklahoma. That in the said case of Gilcrease vs. Butte, that the compensation of the said H. B. Martin shall be 10% of whatever sum so recovered and collected in said cause whether by judgment or compromise, and that the said H. B. Martin shall pay out of said commission his personal expenses in attending to said cause and that the compensation of the said H. B. Martin, for his services in the case of Gilcrease vs. Millikin, shall be 7

315 and ½ per cent of all sums of money collected from the said William H. Millikin and the other defendants in said cause, on account of the royalties for which said suit is prosecuted. And 7 and ½ per cent of all damages which may be recovered and collected in said cause.

It is further contracted and agreed that the said H. B. Martin shall represent the said Thomas Gilcrease in whatever litigation he may be a party for a period of one (1) year from the date of this contract, and that the compensation to be paid for such services shall be the reasonable value of the same to be agreed upon between the parties hereto at the time.

It is further agreed that a retainer fee of $200.00, the receipt

whereof is hereby acknowledged, shall be and is paid by the said party of the first part to the party of the second part, and that such retainer fee covers all services to be rendered, consultation, advice, examination of abstracts, and preparations of deeds and other papers and all other services of a legal nature which may be required by the said party of the first part of the said party of the second part during the term of this contract, except, the prosecution and defense of suits in court.

Provided, however, that the said H. B. Martin, is to charge no commission upon such royalties as are admitted and paid without contest by the said William H. Millikin and —— Colley, accruing upon said oil and gas lease from this date.

316 In Witness Whereof, We have hereunto set our hands this 21st day of April, 1910.

THOMAS GILCREASE,
Party of the First Part.
H. B. MARTIN,
Party of the Second Part.

317 THOMAS GILCREASE, called as a witness in his own behalf, having been first duly sworn was examined in chief by Mr. West, and testified as follows:

Q. What is your name?
A. Thomas Gilcrease.
Q. Are you the plaintiff in this action?
A. Yes, sir.
Q. Where do you live, Mr. Gilcrease?
A. Tulsa.
Q. What is your mother's name?
A. Lizzie Gilcrease.
Q. Are you familiar with Lizzie Gilcrease's signature, your mother's signature?
A. Yes, sir.
Q. I will ask you to look at the paper I am showing you and tell me whose signature is attached to the slip that is pasted?
A. That is my mother's.
Q. Mr. Gilcrease, the slip to which I called your attention is attached to a copy of a deed from you to Lizzie Gilcrease of Wealaka, Oklahoma, and executed on the 18th day of September, 1908. Is that Lizzie Gilcrease who signed the slip that is pasted onto that deed and the signature on which you have just identified, the same Lizzie Gilcrease as the person who is named as grantee in the deed?
A. Yes, sir.
Q. Is the date of the execution of that slip that is pasted onto that deed the true date?
A. So far as I know.
Q. With reference to the making of the deed, was it made at or about the time of the making of the deed or at some other time?
A. That slip there?

Q. Yes.

A. Mr. Butte of Muskogee made that, he made the deed
318 and the slip too; he gave it to me and I had my mother to sign it.

Q. Were they executed at about the same time?

A. At the same time.

Mr. West: Plaintiff now offers in evidence the written slip attached to Exhibit E, Exhibit E being a copy of the deed from Thomas Gilcrease to Lizzie Gilcrease heretofore introduced in evidence, and asks that said declaration of trust of Lizzie Gilcrease be admitted in evidence in this cause and properly identified by the stenographer.

Judge Diggs: To which we object as incompetent, irrelevant and immaterial, not having been recorded, no notice of its existence shown to have come to the knowledge of these defendants prior to the execution of any of the instruments introduced in evidence.

The Court: Overruled.

Judge Diggs: Exception.

Which said slip, so offered and received in evidence was marked Exhibit H. and is in the words and figures following, towit:

PL'F'S EX. H. 3125.

I hereby declare and make known that I hold in trust for Thomas Gilcrease whatever title is conveyed to me by a certain Warranty Deed dated September 18, 1908, a copy of which is hereto attached.

Witness my hand this 19th day of September, 1908.

LIZZIE GILCREASE.

Q. Mr. Gilcrease, whose signature is that appended to the paper I am showing you?

A. That is my mother's.

Q. Is that the same Lizzie Gilcrease that you made the
319 deed to in September of 1908 that we have just been talking about?

A. Yes, sir.

Q. The same Lizzie Gilcrease who signed that declaration of Trust that you have just been asked about?

A. Yes, sir.

Mr. West: Plaintiff now offers in evidence quit claim deed from Lizzie Gilcrease to the plaintiff in this case Thomas Gilcrease, executed on the 6th day of March, 1911.

Judge Diggs: No objection.

Which said quit claim deed so offered and received in evidence, was marked Exhibit I, and is in the words and figures following, to-wit:

320 PL'F'S EX. I. 3125.

Quit Claim Deed.

This indenture, made this 6th day of March, in the year A. D. 1911, between Lizzie Gilcrease of Tulsa county, Okla. of the first part, and Thomas Gilcrease of Tulsa county, Okla. of the second part.

Witnesseth: That the said party of the first part in consideration of the sum of One dollar *Dollars* to — duly paid the receipt whereof is hereby acknowledged, *do I* hereby quit claim, grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns, forever, all — right, title, interest and estate, both at law and in equity, of, in and to the following described real estate situated in the county of Tulsa and State of Oklahoma to-wit:

South one half (½) of the Northwest Quarter (¼) and the North half (½) of the Southwest Quarter (¼) of Section 22, Township 17, Range 12 East, containing one hundred and sixty acres,

Together with all and singular the hereditaments and appurtenances thereunto belonging. To have and to hold the above granted premises unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set her hand the day and year first above written.

LIZZIE GILCREASE.

321 STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, J. F. Paulter, a Notary Public in and for said county and State on this 6th day of March, 1911, personally appeared Lizzie Gilcrease, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal the day and year above set forth.

[SEAL.] J. F. PAULTER,
Notary Public.

My commission expires June 14, 1914.

322 Endorsements: Quit Claim Deed by Lizzie Gilcrease, Leonard, Okla., to Thomas Gilcrease, Tulsa, Oklahoma.

STATE OF OKLAHOMA,
Tulsa County, Tulsa, Okla.:

I hereby certify that this instrument was filed for record in my office on Mar. 8, 1911 at 9:50 o'clock A. M. and is duly recorded in Record 83, Page 224.

[SEAL.] H. C. WALKLEY,
Register of Deeds.

22-17-12.

HAINER & MARTIN.

323 Q. When you executed the deed to this land to your mother in September, 1908, did she pay you any consideration for it?

A. No, sir.

Q. Was it executed for the purpose of conveying to her——

Judge Stuart: We object to that, asking him what it was executed for because he is the plaintiff in the case.

Mr. West: Strike out that question.

Q. How came you to execute that deed, Mr. Gilcrease, and what was its purpose?

A. That was some few months after I had married, so Mr. Butte, they wanted to find out whether or not I could sell any of my property or not, whether I could convey good title to my property, and he executed the deed and had me sign it, to my mother.

Q. Who was Mr. Butte?

A. He was my father's attorney there to Muskogee.

Q. What was your father's name?

A. W. L. Gilcrease.

Q. Was he acting at that time in the capacity of guardian to you?

A. Yes, sir, he was guardian for me.

Q. Go ahead and state what the understanding was as to how your mother should hold that title and for whose benefit?

A. That is all; it was executed for to find out whether or not I could convey title to my property or not; I was going to have some kind of a test trial on it or something.

Q. What was the understanding between you and your mother?

A. That is all the understanding was; she was just to hold the property for me to see whether or not I could convey the property.

Q. For you?

A. Yes, she was just holding it for me.

324–361 Q. Did she have any personal property interest in it herself?

A. No, sir.

Q. And never paid you anything for it?

A. No, sir.

Q. Is she the same Lizzie Gilcrease who executed the lease to McCullough that has been introduced in evidence in this case?
A. Yes, sir.
Q. I notice that some of these assignments that were made to you are made to W. T. Gilcrease, did you ever go by that name, Tom?
A. No, I always went by the name of just Tom.
A. Are you the man who was intended to be named in those instruments?
A. Yes, sir.
Q. Do you know how they happened to have W. T. Gilcrease in them?
A. No, I don't, only just the name was just William Thomas Gilcrease.
Q. That was your full name?
A. Yes, sir, that was my full name.
Q. You have usually adopted a short form and called yourself Thomas Gilcrease?
A. Yes, sir.
Q. Your full name was then in fact William Thomas Gilcrease?
A. Yes, sir.
Q. Those papers were executed and delivered to you and you are the man to whom McCullough and Martin assigned the interest in this lease we have up here, are you?
A. Yes, sir.
Q. How long have you been living in Tulsa, Mr. Gilcrease?
A. About four years and a half.
Q. About what date was it you came up here to live?
A. Well, it was—it must have been along in December of 1908.

* * * * * * *

362 Q. Tom, what was your actual age when you came to Tulsa from down there.
A. Eighteen.
Q. What was your birthday, what year were you born in, and what date?
A. On the 8th day of February, 1890.

* * * * * * *

363–422 Cross-examination.

By Mr. Martin:

Q. Tom, you are married?
A. Yes, sir.
Q. When were you married?
A. In August 19—I believe I was married in August, 1908.
Q. How old are you now, according to your computation?
A. I was twenty three years old the 8th day of last February.
Q. You have a family, wife and children?
A. Yes, sir.

* * * * * * *

423–549 Q. I will show you a paper and ask you to look at it and tell me what that is?

A. That is a lease from John Archer to myself and Mr. Martin.

Q. Is that the date that appears on this lease as the date of its execution the date when it was actually executed?

A. It seems as though to me there was another lease. There was another lease on there at the time that hadn't been cancelled or something.

Q. What I am talking about is whether the date that is on this paper is the date it was actually executed to you and Mr. Martin?

A. Yes, sir.

Q. That is the first lease you and Mr. Martin had?

A. That is the first lease I ever had in my life.

Mr. West: Plaintiff offers in evidence a lease from John W. Archer to W. T. Gilcrease and H. B. Martin, dated November 2d, 1910.

Mr. Martin No objection.

Which said lease so offered and received in evidence, is in the words and figures following, to-wit:

* * * * * * *

550 Department of the Interior.

Commissioner to the Five Civilized Tribes.

Creek Roll, Citizens by Blood.

No.	Name.	Age.	Sex.	Blood.	Card No.
1505	Gilcrease, Thomas (Age nine)	9	M.	⅛	456

This is to certify that I am the officer having custody of the approved roll of Creek citizens by block of Creek Nation and that the above and foregoing is a true and correct copy of that portion of said roll appearing at Number 1505, enrolled as of June 9, 1899. P. O. Leonard, Oklahoma.

J. G. WRIGHT,
Commissioner to the Five Civilized Tribes.

C. D. Drews, Clerk, Muskogee, Oklahoma, April 3, 1913.

551 Mr. West: Plaintiff now offers in evidence certified copy of the enrollment record on file in the office of the Commissioner to the Five Civilized Tribes pertaining to the enrollment of the plaintiff, Thomas Gilcrease, and certified by J. G. Write, Commissioner to the Five Civilized Tribes.

Judge Diggs: To which we object as being incompetent, irrelevant and immaterial and not shown that the certificate is made by the officer having custody and control of the original records.

Mr. Cruce: Let me add one objection to that: That the plaintiff having proven by the plaintiff himself that he was twenty-one years of age on the 8th day of February, 1911 and not claiming that they were surprised at that testimony they cannot now contradict their own witness by record testimony.

Mr. Biddison: We are not asking to do that by that, if the court please, we are asking to prove the limitation fixed by the Act of Congress when he became capacitated to handle his land and the proof of his actual age goes to his capacity and competency, not legal competency but his actual capacity, business capacity, to transact business, which is a competent matter for the court to consider in connection with the other facts and circumstances of the case to show the youth, experience, and so forth, but as to the legal
552 disability the roll that is under Congressional Act as fixing the time before which he could not dispose of his property, we introduce this evidence not for the purpose of showing the actual age, Congress cannot change a man's age as a fact as our Supreme Court has said and as the Federal Court -as said, the Congress could not by Act make a man twenty-one years of age who was not 21 years of age, but they can prescribe a limitation and did so in that act fixing the time at which he could handle his allotment. They could do that and did do it.

The Court: Same ruling.

Which said enrollment record, so offered and received in evidence is in the words and figures following to-wit:

(Here follows enrollment record marked page 553.)

Department of the Interior
Commissioner to the Five Civilized Tribes

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the lands of said tribes, and that the above and foregoing is a true and correct copy of *the enrollment records on file in this office in so far as the same pertains to the enrollment of Thomas Gilcrease Creek by blood, Roll No. 1505.*

MUSKOGEE, OKLAHOMA
APR 3 - 1913
CHJ

J. G. Wright
Commissioner to the Five Civilized Tribes

Residence: Sequoyah — CREEK NATION — CREEK ROLL — Card No. 456
Post Office: Mounds, Ind. Ter. — Field No. 458

Pyfs Ex 5 3-20

Dawes' Roll No.	No.	NAME	Relationship to Person first Named	AGE	SEX	BLOOD	Tribal Enrollment: Year	Town	No.	Name of Father	Year	Town	Name of Mother	Year	Town
1504	1	Gilcrease, Lizzie		25	F	1/4		Broken Arrow		H. G. Yowell		Non-Citizen	Martha Yowell		Broken Arrow
1505	2	" , Thomas	Son	9	M	1/8		" "		Wm. L. Gilcrease		" "	No. 1		
1506	3	" , Eddie	"	7	"	1/8		" "		" " "		" "	No. 1		
1507	4	" , Ben	"	5	"	1/8		" "		" " "		" "	No. 1		
1508	5	" , Lena	Dau	3	F	1/8		" "		" " "		" "	No. 1		
1509	6	" , Florence	"	1	"	1/8		" "		" " "		" "	No. 1		
	7														
	8	(131)					Nos 1, 2, 3 and 4 admitted by Colbert Citizenship Commission, Case No. 1/10, see								
	9						Creek Citizenship Record No. 1, pages 106 to 11								
	10	Citizenship certificate issued June 9th 1899					No 6 born subsequent to application to Colbert Commission								
	11														
	12														
	13	ENROLLMENT of Nos. 1504-1509 inclusive approved by the Secretary of Interior March 13 1902													
	14														
	15														
	16														
	17														
	18														June 9/99

* * * * * * *

554-925 Thereafter, at the October, 1915, Term of said Supreme Court, on the 21st day of December, 1915, the following proceeding was had in said cause, to wit:

#5773.

THOMAS GILCREASE

vs.

G. R. MCCULLOUGH et al.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed and the cause remanded with directions to cancel the lease of the plaintiff in error, Thomas Gilcrease, to Grant R. McCullough, date- August 24, 1909; and the lease of Lizzie Gilcrease to Grant R. McCullough of September 5, 1911; and the lease of Thomas Gilcrease to H. B. Martin and G. R. McCullough of February 8, 1911; and the assignment of H. B. Martin to G. R. McCullough of March 24, 1911; and for further proceedings not inconsistent with the opinion herein. Opinion by Brett, C.

By the Court: It is so ordered, the opinion herein is hereby adopted in whole, and judgment is entered accordingly.

926 Thereafter, On January 5, 1916, the following proceeding was had in said cause, to wit:

#5773.

THOMAS GILCREASE

vs.

G. R. MCCULLOUGH et al.

And now on this Jan. 5, 1916, it is ordered by the court that the mandate of this court in the above cause be stayed pending petition for rehearing, and the petition for rehearing is transferred to the Supreme Court for investigation.

927 Thereafter, at the January, 1916, Term of said Supreme Court, on the 29th day of February, 1916, the following proceeding was had in said cause, to wit:

#5773.

THOMAS GILCREASE

vs.

G. R. MCCULLOUGH et al.

And now on this day it is ordered by the court that the above cause be set for oral argument at the April, 1916, term; and petition for rehearing is hereby granted.

928 Thereafter, at the April, 1916, Term of said Supreme Court, on the 21st day of April, 1916, the following proceeding was had in said cause, to wit:

#5773.

THOMAS GILCREASE

vs.

G. R. MCCULLOUGH et al.

And now on this day the above cause is argued orally and the cause is submitted, and it is ordered by the court that permission be granted to print petition for rehearing.

929 Thereafter, at the October, 1916, Term of said Supreme Court, on the 10th day of October, 1916, the following proceeding was had in said cause, to wit:

#5773.

THOMAS GILCREASE

vs.

G. R. MCCULLOUGH et al.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby affirmed.

Opinion by Turner, J. All the Justices concur except Kane, C. J., absent and not participating.

930 Filed Oct. 10, 1916. Wm. M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5773.

THOMAS GILCREASE, Plaintiff in Error,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants in Error.

Syllabus.

1. In a suit to set aside an oil and gas mining lease, dated August 24, 1909, on the ground that it was procured by fraud and while plaintiff was a minor and hence was void under the Act of May 27, 1908; to prove his minority at that time plaintiff introduced in evidence the census card showing that he was 9 years old on the date of his enrollment. At the

lower right-hand corner of the card appeared: "June 9/99"; Held: That as there was nothing on the face of the card to show such was the date of his application for enrollment, the card was without probative force to prove that plaintiff was 9 years old on that date.

2. For the purpose of proving his quantum of Indian blood to be one-eighth, plaintiff introduced in evidence a certified copy of the Approved Rolls of the Creek Citizens by Blood of the Creek Nation, showing his quantum of Indian blood to be one-eighth. In the certificate thereto was the statement: "Enrolled as of June 9, 1899." Held: That such statement was no part of the record certified and was without probative force to prove the date of plaintiff's application for enrollment.

3. In a suit to set aside an oil and gas mining lease for fraud in its procurement and while plaintiff was a minor in violation of the Act of May 27, 1908, where the enrollment records fail to disclose the date of enrollment of plaintiff, but the undisputed parol evidence shows him to have been born February 8, 1890 and hence was a minor on August 24, 1909, the date of the execution of the lease; evidence examined and held: That the court was right in finding there was no fraud in its procurement but that, aside from the question of fraud, the lease was in violation of the Act and not voidable but void.

4. Where a minor citizen of the Creek Nation of one-eighth Indian blood during his minority executes a lease upon his allotment, without the intervention of the county court and void as in contravention of the Act of May 27, 1908, and after attaining his majority, without fraud in its procurement and for a valuable consideration, executes another lease on the same land to the same party and others interested in the prior lease for a like term, held: That the subsequent lease is good and that the court did not err in refusing to set the same aside.

931 5. Under Act May 27, 1908, c. 199, sec. 3 (35 Stat. 313) providing that the enrollment records of the Commission to the Five Civilized Tribes shall be conclusive evidence as to the age of an enrolled citizen or freedman; assuming that we can take judicial notice that "June 9/99" appearing on the lower right-hand corner of the enrollment record was the date of plaintiff's enrollment and that he was 9 years old on that date, such is only conclusive that on said date he had passed his ninth birthday and had not yet reached his tenth, and does not prove that he was a minor on February 8, 1911, the date of the lease sought to be set aside on the ground of minority, which was 4 months and one day less than twelve years thereafter.

Error from the District Court of Tulsa County.

A. H. Huston, Judge.

Affirmed.

Biddison & Campbell, Attorneys for Plaintiff in Error.
James B. Diggs, Attorney for Defendants in Error.
Of Counsel: Henry McGraw and Rush Greenslade.

Opinion of the Court by TURNER, *J.:*

On February 12, 1912, in the district court of Tulsa county, plaintiff in error, Thomas Gilcrease, an enrolled citizen of the Creek Nation, alleged to be of one-eighth Indian blood, sued G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown to set aside an oil and gas mining lease made, executed and delivered by plaintiff to McCullough, dated August 24, 1909, on his 160 acre allotment in the Creek Nation. The petition alleged not only fraud on the part of all the defendants in its procurement, but that plaintiff was a minor at the time and hence the lease was void. He also alleged that since that time all the defendants, save Bradshaw, while he was yet a minor, still conspiring to defraud him, to-wit:
932 on February 8, 1911, procured from him a contract in writing to explore the demised premises for oil and gas, which he likewise assails for fraud and prays that both lease and contract be set aside and held for naught, and that defendants be required to account for all the oil mined while in possession thereunder and for a receiver, and for general relief.

After separate answers filed, in effect a general denial, there was trial to the court who held, in effect, that plaintiff was a minor at the time he executed the lease sought to be set aside, but whether void or voidable on that account, said lease was expressly adopted by plaintiff after he had reached his majority by the execution of the contract sought to be set aside, and rendered and entered judgment in favor of defendants.

The court was right in holding that plaintiff was a minor at the time of the execution of the lease. To maintain this issue plaintiff introduced in evidence, over objection, a certified copy of the census card for the purpose of showing that plaintiff was 9 years old on the date of his enrollment. At the lower right-hand corner of the card appears the following: "June 9/99"; and, it is contended that, as there is nothing on the face of the card to show that this was the date of application for enrollment, the card is without probative force to prove that plaintiff was 9 years old on that date. Following is the card:

(Here follows enrollment card marked page 933.)

Department of the Interior

Commissioner to the Five Civilized Tribes

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the lands of said tribes, and that the above and foregoing is a true and correct copy of the enrollment records on file in this office in so far as the same pertains to the enrollment of Thomas Gilcrease Creek by blood, Roll no. 1505

MUSKOGEE, OKLAHOMA
APR 3 - 1913

J. G. Wright
Commissioner to the Five Civilized Tribes

C. H. J.

Residence: Broken Arrow — CREEK NATION — CREEK ROLL — Card No. 456

Post Office: Mounds, Ind. Ter. — Field No. 458

Pkgs. Ex. 5

Dawes' Roll No.	No.	NAME	Relationship to Person first Named	AGE	SEX	BLOOD	Tribal Enrollment: Year	Tribal Enrollment: Town	Tribal Enrollment: No.	Name of Father	Year	Town	Name of Mother	Year	Town
1504	1	Gilcrease, Lizzie		25	F	1/4		Broken Arrow		H. Y. Yowell		Non-Citizen	Martha Mag Yowell		Broken Arrow
1505	2	" , Thomas	Son	9	M	1/8		"		Wm. L. Gilcrease		"	No. 1		
1506	3	" , Eddie	"	7	"	1/8		"		"		"	No. 1		
1507	4	" , Ben	"	5	"	1/8		"		"		"	No. 1		
1508	5	" , Lena	Dau	6	F	1/8		"		"		"	No. 1		
1509	6	" , Florence	"	1	"	1/8		"		"		"	No. 1		
	7														
	8	(191)					Nos. 1, 2, 3 and 4 admitted by Colbert Citizenship Commission, Sept. 1/96, see								
	9						Creek Citizenship Record No. 1, pages 106 to 1								
	10	Citizenship certificate issued June 9th 1899					No 5 born subsequent to application to Colbert Commission								
	11														
	12														
	13	ENROLLMENT of Nos. 1504-1509 inclusive approved by the Secretary of Interior March 13 1902													
	14														
	15														
	16														
	17														
	18														June 9/9

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934 The point is well taken.

In McDonald v. Holland, 230 Fed. 945, the fact was that before the date located as here on the card, but long after the card had been made out, some one had written: "date of application for enrollment," and, as the same was not questioned, such the court took said date to be. But here, where it is questioned and it is insisted that such date, standing alone, is without probative force to prove that such was the date of application for enrollment, we are bound to hold the objection well taken since we cannot take judicial notice that such date was intended to evidence the date of application for enrollment. And further, since there was no parol evidence introduced to show that such was, in point of fact, the date of application for enrollment but there was uncontroverted evidence to show that plaintiff was born February 8, 1890, the court did not err when he rec-oned plaintiff's age from the latter date and held that plaintiff was a minor when he, on August 24, 1909, executed the lease sought to be set aside. And he certainly did not err for the reason that, rec-oned from either date, plaintiff was a minor on the date in question.

For the purpose of proving his quantum of Indian blood to be one-eighth, plaintiff also introduced in evidence this "card":

"Department of the Interior,

Commissioner to the Five Civilized Tribes.

Creek Roll, Citizens by Blood.

Number.	Name.	Age.	Sex.	Blood.	Card.
1505	Gilcrease, Thos.	(Age 9)9	M.	1/8	456.

This is to certify that I am the officer having custody of the approved roll of Creek citizens by blood of the Creek Nation and that the above and foregoing is a true and correct copy of that portion of said roll appearing at Number 1505 enrolled as of June 9, 1899, P. O. Leonard, Oklahoma.

J. G. WRIGHT,
Commissioner to the Five Civilized Tribes."

Which, appearing as it does to be a certified copy of the "approved roll," was sufficient proof for that purpose for the reason that the Act of May 27, 1908 makes the "rolls of citizenship" conclusive evidence as to the quantum of Indian blood as distinguished from the "enrollment records," which it makes conclusive evidence as to the age of the plaintiff.

935 But the recitation "enrolled as of June 9, 1899," contained in the certificate to this card of the Commissioner to the Five Civilized Tribes was not sufficient to prove that "June 9, 1899" was the date of plaintiff's enrollment. This was held in Jackson v. McGilbray, 148 Pac. 703. There the court said:

"Plaintiff introduced in evidence a portion of the Creek freedman roll, to-wit:

'Department of the Interior, Commissioner to the Five Civilized Tribes. Creek Freedman Roll No. 852, name, McGilbray, Clarence; age (age nine) 9; sex, M.; census card No. 239.'

accompanied by the following certificate:

"This is to certify that I am the officer having custody of the approved roll of Creek freedmen, and that the above and foregoing is a true and correct copy of that portion of said roll appearing at No. 852 enrolled as of August, 1898, P. O. Lee, Oklahoma.

J. G. WRIGHT,
'Commissioner to the Five Civilized Tribes,
By C. S. PITTS, *Clerk.'*

"* * * No date appears in this record itself showing when it was compiled. The age of the allottee, Clarence McGilbray, is unquestionably shown therein to be nine years at some time not stated. When was he nine years old? When did he reach his majority? These dates it is impossible to determine from the record itself. The court evidently, and necessarily, resorted to, and relied upon, the certificate of the custodian of such records in making its findings and arrived at the conclusion that the allottee was a minor on July 1, 1910, but was of full legal age one month later.

"The copy of the portion of the enrollment records offered in evidence is incomplete, and, independently of the certificate of the official in charge thereof, is insufficient to prove age. The office of the certificate is to attest the correctness of that part of the record which is exemplified, and is evidence thereof; but it is no part of such record, nor is it evidence of any fact not appearing in the record proper. As evidence of the fact that it was made in August, 1898, or that the allottee named therein was enrolled as of August, 1898, it was incompetent and without probative force or effect."

The court was also right in holding there was no fraud in the procurement of the instruments assailed. Upon this point there is no material conflict in the testimony. The evidence discloses that plaintiff was a citizen of the Creek Nation of one-eighth Indian blood, was born February 8, 1890, and was married and the owner of the allotment in question. Sometime in 1896 his father, acting as his guardian, leased this tract of land for oil and gas mining purposes to one Milliken for 15 years for a bonus of $17,000 and a royalty of one-eighth, who took possession under the lease and bored some forty or more producing wells thereon. There-
936 after in February, 1909, the district court of Wagoner county, pursuant to the prayer of his petition, rendered and entered a decree purporting to remove plaintiff's disability of minority and confer upon him his rights of majority; (and which it was presumed to do until it was held in Truskett v. Closser, 236 U. S. 549 (1915) that such decree was void) whereupon his father was discharged as guardian and plaintiff managed his own affairs. That same year plaintiff moved to Tulsa, where he met the defendant Martin for the first time and whom he shortly thereafter retained

generally as his attorney. While Martin was acting as such, trouble arose between plaintiff and Milliken over the royalty payable to plaintiff, which, when the amount thereof was ascertained, Milliken paid to the Indian Agent who refused to turn it over to plaintiff on account of his minority, whereupon defendant Bradshaw was appointed his special guardian in April, 1910, for the purpose of receiving the same, which he did, and immediately turned the money over to Gilcrease and was entitled to be discharged. In the summer of 1909, plaintiff, in view of the fact that the Milliken lease would soon expire, wanted to sell another lease on the land, to take effect upon the expiration of the Milliken lease and run for another term of 15 years and offered to take $10,000 bonus therefor. Hearing this, the defendant Bradshaw asked him what bonus he was receiving from Milliken and plaintiff answering $17,000, Bradshaw said: "I suppose you will take the same amount for another lease?" to which plaintiff replied that he would. This conversation took place while they were both viewing the leasehold; after which they returned to Tulsa where plaintiff called next day at the bank, of which Bradshaw was cashier and the defendant McCullough was president and informed Bradshaw that he was ready to close the deal. After closing the deal, which was talked over between plaintiff, Bradshaw and McCullough, on request of plaintiff they went to the office of defendant Martin who was requested by plaintiff
937 to draw up the papers. This he did by drawing a lease from plaintiff McCullough, dated August 24, 1909, for a recited cash bonus of $17,000 and a one-eighth royalty, the same to commence at the expiration of the Milliken lease and run for a term of 15 years, or for so long as oil or gas was found in paying quantities. As to the $17,000 bonus it was agreed between plaintiff and McCullough that $2,000 be paid in cash, which was done, and $500 every ninety days thereafter until McCullough took possession of the demised premises; at which time the balance of the bonus was to be due and payable. After the execution of these instruments and after the $2,000 cash had been paid, it was discovered that prior thereto plaintiff had conveyed the land in trust to his mother, whereupon McCullough demanded that the title be cleared whereupon plaintiff requested the defendant Martin, his attorney, to secure a like lease from his mother to McCullough, which he afterwards did, believing at the time the lease from plaintiff to McCullough to be good.

Under the terms of the Milliken lease, Milliken, at the expiration of his lease, was obligated to leave the casing in all producing wells, but was permitted to remove the other equipment and also the casing from non-producing wells.

This provision in said lease left it "a gamble" as to the probable value of the property for oil production after the expiration of his lease. And such value was rendered more doubtful, owing to the fact that, as a result of ill feeling between plaintiff and Milliken, the latter had declared that he did not want to lease the property after his lease had expired for the reason it would be of no value as an oil property, and, to render it so, exerted himself to destroy it

as such by shooting the wells with charges of explosives many times too large in order to exhaust the oil so as to render them non-producing and thereby afford him the right to remove the casing and other equipment from the property at the expiration of his lease. Thus matters stood at the time of the execution of the lease in question from plaintiff to McCullough, at which time the amount
938 of bonus which would be fair to pay for it varied, in the opinion of the witnesses who testified on that point, from $200,000 to $15,000; while others testified that the value of the lease was a pure gamble and not a marketable proposition at all. And thus matters stood for about a year thereafter, at which time, as only a few months intervened until McCullough had the right to take possession under his lease and oil, in the meantime, had greatly advanced in price and the condition of the wells was such as to justify the presumption of indefinitely continued profitable production and hence the property had greatly appreciated in value, plaintiff approached McCullough to buy back from him a fourth interest in the lease. It might be well to pause here and say that the evidence reasonably tends to prove that the bonus paid for this lease was a fair one under all the circumstances, and that there is a total absence of fraud in the procurement of said lease.

The negotiations which followed resulted, on October 22, 1910, in the assignment by McCullough to plaintiff a one-fourth interest in the lease for $15,000, and also an assignment of McCullough to Martin of a one-fourth interest therein for a like amount. And as McCullough, since the making of the lease of August 24, 1909, has paid plaintiff $4,000 of the consideration therefor, leaving a balance due plaintiff of $13,000 plaintiff paid for the one-fourth interest so purchased, by taking credit for his payment of said $13,000 and by paying $2,000 in cash. Martin purchased his one-fourth interest in the lease at the request of plaintiff and settled for it in a way not necessary here to state but which was perfectly fair; and, as it was satisfactory to McCullough, no one else need complain. On February 8, 1911, the day the Milliken lease expired and plaintiff reached his majority, plaintiff, McCullough and Martin made and entered into the following:

939 *"Contract.*

"This Indenture, made and entered into this 8th day of February, 1911, by and between Thomas Gilcrease, G. R. McCullough and H. B. Martin,

Witnesseth: That for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto contract and agree that the said Thomas Gilcrease, R. G. McCullough and H. B. Martin, their respective heirs, administrators and assigns shall have and hold in the proportions hereinafter described, the exclusive right to mine oil and gas from and upon the premises hereinafter described, to-wit:

The south one-half (½) of the northwest quarter (¼) and the

north one-half (½) of the southwest quarter (¼) of Section Twenty-two (22) Township Seventeen (17) North, Range Twelve (12) east of the Indian Meridian, in the county of Tulsa and State of Oklahoma, as long as oil and gas, or either of them, are found upon said premises in paying quantities.

The said Thomas Gilcrease shall receive as royalty for said leased premises one-eighth (⅛) of all the oil mined and saved upon said premises, delivered in pipe line, and such royalty shall be paid at any time after the sale of such oil, upon demand of the said Thomas Gilcrease. And in addition to said royalty, the said Thomas Gilcrease, his heirs, executors and assigns, shall have and hold an undivided one-fourth (¼) of the leasehold interest in said property; the said G. R. McCullough, his heirs, administrators and assigns, shall have and hold an undivided one-half (½) of the leasehold interest in said land; and the said H. B. Martin, his heirs, administrators and assigns, shall have and hold an undivided one-fourth (¼) of the leasehold interest in said land.

And it is further contracted, covenanted and agreed that the parties hereto, their heirs, administrators and assigns, shall operate said lease for oil mining purposes from this date as long as oil and gas is found thereon in paying quantities, and that after the payment of the royalty hereinbefore provided for to the said Thomas Gilcrease, that all of the balance of the proceeds of the oil produced from said leased premises, less necessary operating expenses shall be applied to the payment of the cost of equipment of said lease until such equipment shall have been fully paid for out of said proceeds.

And it is further contracted, covenanted and agreed that the equipment now upon said leased premises, and hereafter to be placed upon said leased premises, shall be and remain the personal property of the said Thomas Gilcrease, G. R. McCullough and H. B. Martin, their heirs, executors and assigns, in the proportion of the interests of said parties in said leasehold, as evidenced by this contract.

And it is further covenanted, contracted and agreed that the said parties shall not remove any of said equipment, including powers, engines, tanks, lead pipes, houses, tubing, rods, casings or any other portion of said equipment from any wells upon said leased premises, as long as oil is produced from said wells in paying quantities, but that when such wells shall become exhausted, and no longer produce oil in paying quantities, then such equipment may be removed by said parties hereto, their heirs, administrators and assigns.

And it is further covenanted and contracted that the expenses of operation of said leased premises for mining purposes shall be paid by the parties hereto in the proportion of their respective interests as hereinbefore described, except that the royalty interest of the said Thomas Gilcrease shall not be liable for any of the expenses of the equipment or operation of said lease, and shall be free from any expenses whatever.

In witness whereof, we have hereunto set our hands this 8th day of February, 1911.

THOMAS GILCREASE.
G. R. McCULLOUGH.
H. B. MARTIN."

(Then follows the acknowledgment of all the parties.)

940 While the evidence fails to disclose just what interest the defendants Bradshaw and Brown have in said lease, it does disclose that whatever that may be the same is included in the one-half interest of McCullough. It further shows that soon after the execution of said contract the parties thereto took possession of the premises therein described, but before they could produce oil, were compelled to replace that part of the equipment which Milliken had removed in the way of pumps, apparatus, power, rods, casing, etc., after which they proceeded to operate the property under said contract and to market the oil produced. It seems that this new equipment was obtained at a cost of some $60,000, and mostly upon the credit of McCullough, through arrangements with supply companies and eventually paid for by installments out of the proceeds of the sale of oil, after which operating expenses were paid and the remainder divided among the parties as their respective interests appear in the contract. It also seems that such production was considerable, as a result of which operations were conducted upon the basis mentioned up to the time this suit was brought,—the pipe line company paying the parties in interest for the oil upon division orders signed by them which, when obtained, they turned back into a fund out of which was paid the operating expenses and the installments due upon the equipment. In July following, the defendant Martin in the presence and with the knowledge of plaintiff in settlement with his law partner, extinguished his partnership claim to the interest of Martin in the contract for $12,500. On December 11, 1911, plaintiff and Martin had a general settlement of their affairs, whereupon Martin assigned to plaintiff three-fourths of his one-fourth interest in the premises. And thus matters stood at the time this suit was brought.

From all of which we fail to see any fraud whatever in the procurement of either or both of the instruments assailed. Certainly there is nothing upon which to base the charge that the defendant Martin was guilty of fraud and of over-reaching his client
941 from start to finish. He was the mere scrivener in preparing the lease of August 24, 1909 and that to at the request of Gilcrease. Although he was at that time his attorney under general retainer, he was not consulted as to the advisability of executing the lease, much less as to the fairness of the bonus to be paid therefor. All parties in interest thereto made the agreement thereby expressed without his knowledge, much less by his advice. His sole connection with that matter was to reduce the lease to legal form, which he did, believing that plaintiff was competent to enter into the contract. And such it seems was the belief, generally, among lawyers until

Jefferson v. Winkler, 26 Okl. 653, was decided. Nor is there any evidence that his subsequent interest in the property was acquired other than in good faith and for value.

We also fail to see that a fiduciary relation existed between Bradshaw as special guardian for plaintiff at the time of the execution of said lease or the subsequent contract. This for the reason that if such relation arose out of the fact of the qualification of Bradshaw as special guardian in April, 1910, for the purpose of receiving royalties due plaintiff from the Indian Agent, such relation had not arisen at the time of the execution of the lease and had long since ceased to exist at the time of the execution of the contract by the performance of the trust.

All that can fairly be said concerning the circumstances of these transactions is that here is a minor, the owner of certain oil lands of doubtful value, subject to a lease of 15 years about to expire. He has received a sum certain as a bonus for the existing lease and offers to lease the land again for the same bonus for the same purpose and for the same term and to any one who will buy. The original lessee would not have it and intended to remove his equipment from the leasehold at the expiration of his term, thereby necessitating a re-equipment of the wells at a cost of thousands of dollars by a subsequent lessee in order to render them producers. He does so by the lease of August 24, 1909, to take effect at the expiration of the prior lease; and, so far as we can see, drives
942 a good bargain. As the end of the existing term approaches and oil goes up and production increases and he sees the value of the lease appreciate, he goes to the second lessee and seeks to buy back an interest in the lease. Although he has not taken possession under his lease or expended a dollar thereon, the second lessee had the right to set his own price on his property and accordingly priced a one-fourth interest in the lease at precisely what the minor had sold the whole lease for. He was within his rights and the minor had a right to accept or reject it. He accepted; and, having theretofore received $4,000 of the bonus agreed to be paid for the lease, paid the $15,000 for a fourth interest in the lease by foregoing the $13,000 and by paying $2,000 as stated. This may or may not have been wise on his part. With that we have no concern. His subsequent reinvestments in the lease may also not have been wise. With those we have no concern. It is sufficient to say we see, perhaps folly but no fraud in any of them. We see further that this minor, now that he has reacquired, aside from a royalty of one-eighth in the lease, six sevenths of the leasehold; and, after the property under the contract of February 8, 1911, has been re-equipped and is yielding large returns upon the investment, seeking to set aside both contract and lease and reacquire the whole property, and that too, although he entered into that contract after reaching his majority and thereafter induced large expenditures of money on the strength of it and accepted large benefits on account of it; and the question before us is, whether the court erred in refusing to permit him so to do.

Plaintiff insists that his lease of August 24, 1909, made during his minority, was void as in violation of the act of May 27, 1908. This

point is well taken and it has been so held by us ever since Jefferson v. Winkler, 26 Okl. 653. In that case a minor Creek girl married and, after the passage of said act, conveyed a portion of her allotment. Thereafter, pursuant to an order of the county court, her guardian sold her allotment to another. In a contest over the
943 land between the two grantees the court, in effect, held that, while said act removed all her restrictions, it, at the same time, passed the minor and her allotment under the jurisdiction of the probate courts of the state which alone had power to sell her allotment, and hence her conveyance thereof was, not voidable, but void. In summing up the act, the court said:

"In other words, construing all of the foregoing provisions of said act together, we think it was the legislative intent to provide that the allotted lands of freedmen and mixed blood Indians having less than half Indian blood, under the age of 18, if a female, and under the age of 21, if a male, may be sold under the supervision and jurisdiction of the probate courts of the state, and not otherwise.

"It therefore follows that since Rebecca Johnson was not 18 years of age at the time she conveyed the land in controversy to defendant in error, and the sale to him was not made under the supervision and order of any probate court of the state, he acquired no title thereby, and has not sufficient interest in the lands in controversy to entitle him to maintain this action."

Of course what is there said concerning a sale would be true of a lease executed by a minor in violation of the act. It would also be void and not voidable. In Truskett v. Closser, supra, the Supreme Court, in reviewing that case, construed it to hold that the lease under consideration was void. This was also our holding in Tirey et al. v. Darneal, 37 Okl. 606, and in Reid v. Taylor, 43 Okl. 816. This question was also squarely decided in Barbre et al. v. Hood, 227 Fed. 658 by Hook, Circuit Judge. The suit involved the title to 20 acres of land in Nowata county, a part of the surplus allotment of a minor Cherokee freedman. Both appellants and appellee claimed under the allottee; the former by a deed dated April 23, 1910, when he was a minor under the age of 21 years, and the latter by a similar deed dated Sept. 3, 1910, when he was of full age. The question presented was whether the first deed made by the allottee during his minority, in contravention of the act in question, was void or merely voidable. In passing, the court said:

"The deed of the allottee executed when he was a minor and not by a guardian acting under the authority of the court having jurisdiction is void."

See also: McDaniel et al. v. Holland, 230 Fed. 945.

944 The court was also right when he held, in effect, that plaintiff was bound by the terms of the contract of February 11, 1911, and refused to set it aside and rendered and entered judgment for defendants. This for the reason that said contract is, in effect, not a ratification of the lease of August 24, 1909, but a new lease and an independent transaction for a valuable consideration,

made after he became of age. We say it was, in effect, a lease for the reason that the intent of the parties thereto to thereby execute a lease appears upon its face. And the intent of the parties as gathered from its face must characterize the instrument. Or, in the words of Justice Lurton in Tennessee Oil Co. v. Brown, 131 Fed. 696, speaking to this precise point:

"The ruling intention as ascertained from all parts of the agreement should be given effect.,"

in determining whether or not the instrument under construction is a lease. As to the rules of construction, in Branch v. Doane, 17 Conn. 401, it is said:

"There is no doubt that any words which are sufficient to denote the intention of the parties that one shall divest himself of the possession of land, and the other come into it, are enough to constitute, and will in legal construction amount to, a lease, as effectually as if the most apt and pertinent words had been used for that purpose, provided the transaction does not want, in any other respect, the constituents necessary to make a lease; and it is immaterial whether the words are in the form of a licence, covenant or agreement. Bac. Abr. tit. Leases, &c. K. Evans v. Thomas, Cro. Jac. 172. Hall v. Seabright, 1 Mod. 14. Thus, if one 'licence' another to inhabit, or to come upon his dock and carry on his trade, it amounts to a lease. Right d. Green v. Proctor, 4 Burr. 2209. Anon. 11 Mod. 42. But such language does not necessarily, and independent of anything more to show that there was a contract between the parties, constitute a lease. A lease is more than a mere licence; it is a contract for the possession and profits of lands and tenements on the one side, and a recompense of rent or other income on the other; or, in other words, a conveyance to a person for life, or years, or at will, in consideration of a return of rent or other recompense. 4 Cruise's Dig. 67. Jackson d. Webber & al. v. Harsen & al. 7 Cow. R. 326. 3 Blk. Com. 317. If, therefore, the words, whatever they may be, which confer authority to another to take possession of land, are not accompanied with language or stipulations which evince such a contract between the parties, they would amount to a mere licence, * * *."

In Haywood v. Fulmer et al., (Ind.) 32 N. E. 574, quoting approvingly the court said:

" 'A lease is a contract by which one person divests himself of, and another takes the possession of, lands or chattels for a term, whether long or short.' Wood, Landl. & Ten. §203. * * * 'A
945 lease is a species of contract for the possession and profits of lands and tenements, either for life or a certain term of years or during the pleasure of the parties.' 12 Amer. & Eng. Enc. Law tit. "Lease," 976. * * * 'No precise form of words is necessary to make a lease. Any written instrument expressing the agreement of the parties, signed by one and accepted and acted upon by the other, will be obligatory upon both.' Alcorn v. Morgan, 77 Ind. 184. In the case from which we quote the foregoing, the written instrument which the court there held to be a written lease was in form a receipt, but contained independent stipulations sufficient,

in the opinion of the court, to make it also a contract. A lease may not only confer upon the lessee the right to the occupancy of the leased premises, either generally for the time limited, or for some specific purpose or in some specific manner, or the right to occupy and cultivate and to remove the products of cultivation; but it may confer upon him the power to occupy and remove a portion of that which constitutes the land itself. Familiar and common examples of such leases are those authorizing the lessee to quarry and remove stone, to open mines and remove ores, minerals, mineral coal, etc., or to sink wells for procuring and removing petroleum and natural gas."

Tested by these rules, the instrument under construction possesses every element of a present lease. When it says, as it does, that the parties hereto contract and agree that each of them shall have and hold, in the proportions thereinafter described, the exclusive right to mine oil and gas from and upon certain lands therein described, it means that each of them may enter and take possession of those lands and hold them in joint possession for that purpose. This, then, is a contract for the possession of lands. And, when it further says that they shall have the exclusive right to mine as long as oil and gas, or either of them, are found upon said premises in paying quantities, it fixes a certain term or, what is the same thing, one capable of being made certain; and thereby supplies another element of a lease. And when the lease further provides that plaintiff shall receive "as royalty for said leased premises one-eighth of all oil mined and saved upon said premises," it supplies the remaining element which is rent or recompense to the lessor or owner of the land. Moreover, as additional compensation to plaintiff, it is further agreed that plaintiff "shall have and hold an undivided one-fourth of the leasehold interest in said property," which by "leasehold interest" is meant one-fourth of the right to mine for oil and gas, or, in other words in addition to his royalty, should receive as recompense one-fourth of the oil produced upon the demised premises. It is unnecessary to say more to bring the instrument within
946 every definition of a lease but, we will add: as the intent in making the instrument is to govern in characterizing it, here is one which shows upon its face the intent to be to make a lease when it speaks of the lands therein described as the "leased premises" of the interest conveyed as a "leasehold interest," and hence we hold the instrument to be a lease and so, in effect, declared to be upon its face.

United States v. Gratiot et al., 15 Pet. 562, was a suit against the sureties on a bond given for the faithful execution of a license given their principal, with the approbation of the President of the United States, to purchase and smelt lead ore at the United States lead mines on the upper Mississippi for a period of one year from the date thereof. The question certified to the court was whether the President had power under a certain act of Congress to make the contract set forth in the declaration. That question turned upon the further question of whether the contract was a lease within the meaning of the act. The court said:

"This contract purports to be a license for smelting lead ore; and it is objected that this is not a lease within the meaning of the act of Congress. But this objection is not well founded. It is a contract for one year, and of course, within the time limited by the law, which gives to the President authority to lease for five years. Is it, then, a lease? The legal understanding of a lease for years is, a contract for the possession and profits of land for a determinate period, with the recompense of rent. The contract in question is strictly within this definition. * * * This contract is for the possession of land. The work is to be performed at the United States lead mines, and must of course be performed within the limits prescribed by law to be attached to such mines. And there is an express permission to use as much fuel as is necessary to carry on the smelting business, and to cultivate as much land as will suffice to furnish teams, &c., with provender; and there is an express reservation of the rent of six pounds of every hundred pounds of lead smelted, with special and particular stipulation for securing the same. It is not necessary that the rent should be in money. If received in kind, it is rent, in contemplation of law."

In Moore v. Miller, 8 Pa. St. 272, in one of the headnotes it is said:

"In estimating the language which constitutes a lease, the form of words used is of no consequence; it is not necessary that the term lease should be used. Whatever is equivalent will be equally available, if the words assume the form of a license, covenant, or agreement, and the other requisites of a lease are present."

947 See also: Asher v. Johnson, &c., 118 Ky. 702; Pelton v. Minah Con. Min. Co., 11 Mont. 281; Horner v. Leeds, 25 N. J. L. 106; Watson v. O'Hern, 6 Watts (Pa.) 362; Wilcox v. Bostick, 57 S. C. 151; Munson v. Wray, 7 Blackf. 403.

This lease, having been executed upon attaining his majority, under circumstances free from fraud and not for a past, but for a consideration to be paid or "for and in consideration of the mutual covenants and agreements hereinafter contained," which were, among others:

"And it is further covenanted and contracted that the expenses of operation of said leased premises for mining purposes shall be paid by the parties hereto in the proportion of their respective interests as hereinbefore described, except that the royalty interest of the said Thomas Gilcrease shall not be liable for any of the expense of the equipment or operation of said lease, and shall be free from any expenses whatever,"

—but that he would bear his share of the expense of equipment in such proportion as his interest appeared in the lease, we see no reason why plaintiff should not stand by it.

In McKeever v. Carter et al., 157 Pac. 56, a minor Creek freedman had conveyed or entered into a contract to convey his land in contravention of the Act of May 27, 1908, which the court held was void. Almost immediately on attaining his majority, without fraud or undue influence, he made a deed to the land which the court held

to be valid. After reviewing the act and the holdings of this court construing same, the court said:

"In the light of these authorities it would seem that, even though the agreement to convey the land entered into by plaintiff with defendant while plaintiff was a minor was void, and that same could not be enforced had plaintiff declined to perform the same, yet there was no legal impediment in the way of plaintiff conveying his lands to any grantee he chose after reaching his majority, and upon any legal consideration which he saw fit to accept. * * * There is not the slightest evidence in the record tending to impeach the deeds of August 9th and August 31st, other than the fact that an agreement had been made by plaintiff while a minor to convey his lands to defendant. There is no evidence of coercion, undue influence, or other grounds of equitable interference that would impeach either of said two last-named conveyances, and, if plaintiff was on the date of their execution an adult, he was capable in law of conveying said lands to whomsoever he chose, for any lawful consideration, and could, if he saw fit, give said lands away; and, when he executed and delivered these deeds, and accepted the consideration, said deeds were valid and binding conveyances, and operated to transfer plaintiff's title to the grantee therein named, provided he had then reached his majority."

948 And plaintiff was of age when, on February 8, 1911, he made the second lease. Not only was this the presumption, but such was established by the undisputed parol evidence. But, aside from this, assuming that we can take judicial notice that June 9, 1899 was the date of his enrollment and that the census card so shows, and that he was 9 years old on that date, such is only conclusive that on said date he was in his ninth year or had passed his ninth birthday and had not yet reached his tenth, and hence does not prove that he was a minor on February 8, 1911, which was 4 months and one day less than 12 years thereafter. This is in keeping with what we held in Heffner v. Harmon — Okl. — (not yet officially reported) where on this point we followed McDaniel v. Holland, supra, and in the syllabus said:

"Under Act May 27, 1908, c. 199, sec. 3, 35 Stat. 313, providing that the enrollment records of the Commissioner to the Five Civilized Tribes should be conclusive evidence as to the age of an enrolled citizen or freedman, the enrollment record, giving the age of an Indian as 9 years, is conclusive that on that date he had passed his ninth birthday and had not yet reached his tenth, but is not conclusive that he was exactly 9 years of age on that day, and does not establish that he was a minor when he made a conveyance of land one month less than 12 years thereafter."

We are therefore of opinion that the judgment of the court was right and should be affirmed. It is so ordered.

All the justices concur.

949 Thereafter, at the October, 1916, Term of said Supreme Court, on the 23rd day of October, 1916, the following proceeding was had in said cause, to wit:

#5773.

THOMAS GILCREASE

vs.

G. R. MCCULLOUGH et al.

And now on this day it is ordered by the court that plaintiff in error be given 15 days from Oct. 23, 1916, to file petition for rehearing, and the mandate stayed pending hearing on petition.

* * * * * * *

950 In the Supreme Court of the State of Oklahoma.

No. 5775.

THOMAS GILCREASE, Plaintiff in Error,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants in Error.

Petition for Rehearing by Plaintiff in Error.

Comes now the plaintiff in error, Thomas Gilcrease, and prays the court to vacate and set aside its decision herein and grant a rehearing of this cause for the following reasons, to-wit:

I.

The court overlooked the inherent nature of conclusive evidence and of laws, making one fact conclusive evidence of another.

One of the principal controversies in this case is as to the age of Thomas Gilcrease on the 8th day of February, 1911, at the time he entered into a working contract covering the operations of his premises, this being the contract which the court in its opinion finds valid and from which it determines the rights of the parties, having properly found a previous contract dated August 24, 1909, to be absolutely void. The Act of Congress of May 27, 1908, chap. 199, sec. 3, provides that the enrollment records of the Commissioner to the Five Civilized Tribes shall be conclusive evidence as to the age of an enrolled citizen or freedman. The court in its decision and opinion does not give that record conclusive effect and does not give the words "Conclusive Evidence" the legal effect to which they are entitled.

Conclusive Evidence is defined by Bouvier as follows:

"Evidence which of itself, whether contradicted or uncontradicted, explained or unexplained, is sufficient to determine the matter at issue."

"Evidence upon the production of which the judge is bound by

law to regard some fact as proved and to exclude evidence to contradict it."

It is defined by 3rd Encyclopedia of Evidence, page 268, as follows:

"Conclusive Evidence is that character of evidence which either forbids or dispenses with an ulterior inquiry as to the matter sought to be established by proof."

In Missouri, Kansas & Texas Railway Company v. Simonson, 64 Kans. 802, 68 Pac. 653, 91 Amer. St. Rep. 248, the Supreme Court of Kansas says at page 808 of the Kansas Report:

"A statute which declares what should be done as conclusive evidence of a fact is one which of course precludes investigation into the fact and itself determines the matter in advance of all judicial inquiry."

From these authorities it is apparent that the effect of the Act of Congress is to withdraw the question of age from judicial consideration in determining the questions arising under that act and to make actual age immaterial and to fix for the purpose of the act the age shown by the enrollment records as the age by which minority or majority shall be shown. Most statutes which have undertaken to establish a rule of conclusive evidence have been declared unconstitutional by the courts as an invasion of the judicial function and as depriving persons of property without due process of law, and this decision has always been made upon the ground that such statutes prevent judicial inquiry into the actual evidence upon which the party rights depended, but many courts have upheld such statutes, but only in cases where the legislative department had the right to fix the substantive law and have held in all such cases that the establishing of such a rule of evidence was in effect the making of substantive law. See Wigmore on Evidence, vol. 2, sec. 1354, pars. 1-2, and in general upon the subject of Conclusive Evidence. See secs. 1353 and immediately preceding sections. To the same effect, see 3 Ency. of Evidence, pages 291-293 inclusive.

In no case in which the judiciary did not have the power to fix the substantive rights of the parties and enact the substantive law upon the subject, the courts have upheld acts of that character. In Commission of Fisheries et al. v. Hampton Roads Oyster Packers & Planters Association, 64 S. E. Rep. 1041, the Supreme Court of Virginia had before it an act making conclusive evidence certain surveys of the waters adjacent to the State of Virginia to determine their character as oyster beds, and that court upheld the act and said that its effect was to preclude any judicial inquiry into the actual fact as to whether any other waters contained oyster beds and as to whether certain oyster beds were in such waters, and that court cites with approval Gardner v. Bonstell, 180 U. S. 362, 45 L. Ed. 574, in which latter case the United States Supreme Court follows the rule which it has long recognized in many other decisions, that the declaration of the political department of the government as to the character of public lands, whether mineral, non-mineral, desert, forest or otherwise, is conclusive upon the courts and precluded any investigation into the actual evidence. So in that class of statutes, like our

own, which make the issuance of a tax deed conclusive evidence that the proceedings culminating in such deed were legal, have been uniformly upheld so far as the recitals in the deed referred to non-jurisdictional matters or matters over which the legislature had control and could create the substantive law. See Joslyn v. Rockwell, et al., 28 N. E. Rep. 604, also Larson v. Dickey, 39 Neb. 463, 42 Amer. State Rep. 595.

The foundation and basis of all these decisions is whether they uphold the constitutionality of the act in question or deny its constitutionality and that they prohibit judicial inquiry into the fact, and leave as the sole subject of investigation the fact of the issuance of the deed and its recitals. So in Safe Deposit & Trust Co. of Baltimore v. Marburg, 72 Atl. 839, the Court of Appeals of Maryland held valid the act which provided that the failure to demand ground rent for twenty consecutive years shall be conclusive that such rent has been extinguished, to be constitutional and valid because the legislature had the right to fix the substantive statute of limitations and accruing of right by adverse possession and made by this act an actual inquiry as to the extinguishment of the rent proper, leaving only the question as to whether or not rent had been demanded within the period of twenty years.

Giving now these decisions and these authorities their force the effect of the Act of Congress is to say that the age of a Creek citizen or freedman is not an issuable fact in any controversy arising under the Act of Congress; that it has been taken out of judicial inquiry and settled by legislative enactment and that the only question for consideration by the court is what age does the roll show the citizen or freedman to be; for by the express terms of the Act, the enrollment records are the conclusive evidence of the age; that is the evidence which excluded every other form of evidence and every presumption and substitutes for it the ipse dixit of the enrollment record, and it is as if Congress had said in cases involving the age of a citizen or freedman and the validity of his conveyances under the restrictions of this Act, "He is conclusively presumed to be of the age which the roll shows him to be."

If the enrollment record shows the actual birthday, then that controls; if the enrollment record does not give the birthday, but gives the age in years, then there is no presumption that he was of age before the roll shows him of age, but he will be presumed to be actually of the age that the roll shows him to be.

As stated by the court in Commission of Fisheries v. Hampton Roads Oyster Packers Association, supra, the purpose of the enactment was to prevent the needless litigation and perjuries that resulted from the judicial inquiry into the actual facts and to fix a certainty upon which all parties might depend. It is well known that our courts were filled with perjury upon the actual ages of the Indians and freedmen; that it resulted in uncertainty as to titles and endless litigation. Congress could have had no other purpose in this enactment than to terminate such litigation and such perjury and give certainty to titles, and to hold that the words, Conclusive Evidence, as used in the Act of Congress, do not mean exclusive

evidence as the courts have always held it to mean, is to reopen the door to all this perjury, to all this litigation, and to put a foundation of sand under the freedman and Creek titles.

Congress has not enacted that the validity of conveyances should be determined by actual age, but that the validity of conveyance should be determined by certain conclusive rules; that is to say, by the age shown by the enrollment records, and to deny this conclusive and exclusive effect of the enrollment records is to deny the Act of Congress its force and to refuse to construe it in the light of the wrongs which it sought to remedy.

No opinion that has been handed down by any court upon this subject has ever construed what conclusive evidence means in the law, nor considered the effect of making the enrollment records conclusive evidence in the light of all the authorities discussing what conclusive evidence really is; that is, evidence which fixes a fact, eliminates judicial investigation of the primary fact, and makes the rule laid down by the legislature the sole guide to its determinations.

It is not an attempt to make the actual ages different from what they were, but it is an attempt to say what the word "age," as used in the act shall mean and how it shall be determined and how it shall be conclusively determined; and unless every authority that has ever discussed conclusive evidence or acts making one fact conclusive evidence of another, has misconstrued these acts and repeatedly held them unconstitutional because the effect of them was to prohibit any further evidence on judicial inquiry into the primary fact, has been in error, the holding of the court in this case is unsound.

It is the age shown by the rolls that is the sole subject of judicial inquiry and it is the age shown by the rolls that determines the validity or invalidity of a conveyance. The Act of Congress does not attempt to fix the birthday not in consonance with the fact. It doesn't attempt to say that a party may not have been older or younger, or may not have reached majority at an earlier date than shown by the rolls, but it does say that the roll is conclusive, and thereby exclusive evidence upon the subject of the word "age" as used in the act, for all purposes arising under the act and therefore there is no presumption of majority unless the record shows minority; but the conclusive presumption is that he is of the exact age shown by the enrollment.

If, as stated by these authorities, conclusive evidence excludes all other evidence and determines the fact, then the enrollment record excludes all other evidence and determines the fact of age for the purpose of the act and days and months have nothing to do with the investigation unless shown by the record.

We insist therefore that this question should be reheard by this court, that it fully consider the legal effect of making enrollment records conclusive evidence, as no court has ever done in any of its opinions.

II.

The court is in error in holding that the date shown upon the card is not the date from which the age is to be computed.

There was introduced in evidence in this case the enrollment record consisting of a census card showing Thomas Gilcrease's age nine, and the court says that there is nothing to show when the application for enrollment was made as if the date of the application for the enrollment governed and further says that the date of this card has no probative force or effect. The syllabus of the case says that there was nothing on the face of the card to show that the date thereof, June 9, '99, was the date of application for enrollment, and the card was without probative force to prove that plaintiff was nine years of age on that date.

"Probative" in the law of evidence, means having the effect of proof, tending to prove, or actually proving, 32 Cyc. 405. Let us see then if there is in the dating of this card any probative force as to the date at which Thomas Gilcrease was determined to be nine years of age.

In McDaniel et al. v. Holland, 230 Fed. 945, cited by the court in its opinion, the court says that such a card as we have here, a general census card, represents a finding and judgment of the commission on the application as to the facts therein stated. This date, June 9, '99, appears in the lower right hand corner of the card and is a date, and apparently the date of the record, for it bears no other date and would therefore appear to be without contradiction or explanation the date of the determination that Thomas Gilcrease was nine years of age.

It is common knowledge and common practice, so much so that courts take judicial knowledge of it and presume that the dates in the margin of instruments are the dates of their execution. A date in the margin of a receipt, a bill, a note or a deed has been frequently held to be prima facie the date of its execution and here we have an instrument or record dated and without contradiction or explanation, we have the rule refused, and refused, too, in spite of the fact that the court unconsciously, as did the Circuit Court of Appeals in McDaniels v. Holland, supra, give it probative force.

In McDaniel v. Holland the court gave it absolutely probative force to the extent that it went, of showing the time from which the age should be computed. It did it unconsciously and automatically.

That has probative force which the normal mind of man takes as some evidence and considers as of some weight for the determination of a fact in issue. This court did not find it necessary to say that other words appearing on the face of the certificate or card did not have probative force merely because they did not indicate anything as to the date of the record or anything as to the date of the determination that Thomas Gilcrease was nine years of age, but unintentionally, automatically and unconsciously the court did turn to this date as the probable date of such determination and of such instrument, and to that extent it did have to this court probative force, as

it must be to every normal mind. It is to be noted that it is not a question of weight to be given to this evidence against contradiction or explanation, but it is a question, as the court stated it plainly, of probative force, and unconsciously the mind turns to this date as a date of the record, as it does to the date on a letter, to a date on any written instrument as a receipt, check or note. Notwithstanding the denial of the court of the probative force of this date it did have probative force to the mind of the court or it would not have considered it, and in all absence of contravening evidence or contradiction caused the mind to turn to it as the date of an enrollment and of the record it is sufficient to establish that fact.

But further, the courts take judicial knowledge of the ordinary practices of the departments of government and that Congress in passing the law in question had knowledge of such practices, and when it adopted a record as evidence of a fact, it knew what that record contained and that the courts would know the practice and recognize such records as the courts recognize the signature- of the officers that certify them, and it is common knowledge and the court would take judicial knowledge, and that it is common knowledge that the date of these records is placed upon them in the manner in which this date is placed upon this card.

To be sure in the case of McDaniel v. Holland, supra, there was a specific proof that certain words, "Date of application for enrollment," had been inserted after the making of the record, and in addition to the apparent date on the card, which latter the court took as the determinative date and said that the card did show that on that date he had passed his ninth birthday and had not yet reached his tenth.

The effect of the Act of Congress upon this card is to say not that Thoams Gilcrease shall not — presumed to be of age and of capacity unless the enrollment record shall show him to be a minor, nor that the enrollment record is evidence of his age so far as it shows same and that his actual age beyond that may be shown by parole testimony, nor that June 9, '99, shall be deemed as his birthday, nor that he shall be presumed to be incompetent to convey unless he is shown to be 21 years of age by the roll, but clearly and explicitly just what it says: That on June 9, '99, he shall be deemed to have been nine years of age and that he will be deemed to have been nine years of age for one year thereafter, because the roll will not for one year thereafter show any other age for him, nor be evidence of any other age for him, and that therefore he will be a minor for twelve years after June 9, '99, because that which is made conclusive and exclusive evidence of his age does not show any other date for him for twelve years thereafter.

It is as logical to say that the statute in providing that the rolls shall be conclusive evidence of the degree of blood means that the rolls are evidence that the citizen had at least the degree of blood therein named and might have as much more as could be proven by parole testimony as it is to say that the enrollment records shall be conclusive evidence of the age and that shall mean that the

citizen shall be deemed of the age therein mentioned and as much more as may be proven by parole testimony.

It will be noted that this is not a case in which there is a written application for enrollment and upon which there is evidence of age, but that the enrollment record shows only what appears upon this card. The date of the application, therefore, for enrollment is immaterial. The record as it stands shows only the age upon a given date, June 9, '99, and the date of the application if shown could throw no light upon the matter. There is nothing in the act that makes the date of the application the date from which the age shall be computed, but the record as it stands is taken as the arbitrary standard to determine this question for the courts to end litigation upon this subject and to put a stop to the needless perjuries that were committed in similar cases. For the purposes of this act, all questions arising under which actual age is absolutely immaterial and evidence of actual age cannot in any way satisfy the statute should be competent as proof upon the question of the competency of a Creek citizen to convey. Congress must have known that it is only in rare instances that the records show the birthday and that in a great majority of the cases the records do not correspond with actual age and the Commission could determine age by mere inspection, by parole testimony and other means, but Congress adopted the enrollment record as the conclusive evidence upon the question of competency to convey, and it did it knowing that the enrollment records did not show actual age except in rare instances, and that the age shown was in a great majority of the cases not the true age; but Congress did not attempt to legislate that the citizen was of the age, which in fact he was not, but that for the purpose of determining his right to convey he should be deemed of the age shown by the enrollment record.

In other words, the object of Congress in passing this law was to fix a definite date in each individual case when the restrictions were removed from the lands of minors and when they had the right to sell their lands free from restrictions instead of by fixing their exact age by such act.

The contract of February 8, 1911, is voidable for fraud, both actual and constructive.

This Court has held in this case in consonance with the statute and all decisions upon similar questions that the lease executed by Gilcrease on August 24, 1909, was absolutely void. It will be remembered that this lease was executed to G. R. McCullough; that subsequent to its execution and prior to the 8th day of February, 1911, the date upon which Gilcrease became actually 21 years of age, he had repurchased from McCullough a one-fourth interest in that lease and had allowed McCullough as consideration therefor all but $2,000 of what McCullough had agreed to pay for the entire lease, and this, too, not as stated in the opinion, after there had been a rise in value and in the price of oil, nor after there had been any change in the possession or threats of Millikin, the then existing lessee, but while the condition remained substantially as when McCullough had bought.

It is not our purpose to discuss the voidable character of the original lease of August 24, '09, because it was not only voidable for fraud, but void in fact, so that when Gilcrease became, under the Congressional Act, entitled to convey he was the absolute owner of his lands free of any lease.

Therefore, if Gilcrease was entitled to convey or lease on the day he became 21 years of age, in fact, he was by reason of the void character of the former instrument the absolute owner of his premises free and clear of any lease or encumbrance, and the lease to McCullough of August 24th, being absolutely void, as held by this court and by all courts, created not even a cloud upon his title. In other words, it was an absolute nullity.

Now, let us see what happened and determine whether the working contract of February 8, 1911, relied upon by defendants in error as the foundation of their title and held by the court in its decision to constitute a sound lease and to be a valid lease, giving defendants in error all the right that they have in the premises, is voidable for fraud, both actual and constructive.

Preliminary to this, we may suggest that it was the theory in the court below and extensively argued and briefed in this court and insisted in the briefs that this contract of February 8, 1911, was a ratification of the former lease, and that the former lease might be so ratified. It was the evidence of Martin in the court below that the purpose of making the contract of February 8, 1911, was to definitely determine their rights under the lease and so was the testimony of Gilcrease. It was not its intention to create rights, and contrary to the statement in the opinion, it was not founded on any new additional consideration; nothing was paid for it, but this court has not only permitted the shifting of the position of defendants in the court below from the theory that this contract was a ratification of the lease to the theory that it constituted itself a lease, but has actually made the shift of theory itself and gone outside of the theory upon which the case was tried and upon which briefs were originally submitted in this court.

But for the purpose of this argument, though not conceding it, assume that the contract of February 8, 1911, was what this court has assumed it, "A sufficient lease," let us see if it is voidable for fraud.

Be it remembered that Martin was employed as Gilcrease's special counsel by the year to attend to all his legal business and *he* his general adviser; that Bradshaw was his guardian, and in this connection allow us to suggest to the mind of the court in its opinion that Bradshaw was only a Special Guardian, that there is no such thing known to the laws of this State as a guardian for the purpose of procuring specific money from a specific debtor of the ward. McCullough was Gilcrease's banker, Bradshaw was cashier of McCullough's bank and Martin was attorney for the bank. Martin by his own testimony was advising Gilcrease that he had a right to deal with these lands after he had his disabilities of minority removed by the State court, and Gilcrease testifies to the same facts, and this in spite of the fact that the case of Jefferson v. Winkler holding to

the contrary had already been decided by this court. McCullough was claiming under this lease made pursuant to the removal of disability on August 24, 1909, to McCullough. They were claiming it a valid lease. Gilcrease was inquiring of Martin as to its validity and was told that it was binding and that he could do nothing, and that if he wanted an interest in the lease back he must buy it, and pursuant to that advice Gilcrease did buy back the one-fourth interest, paying therefor within $2,000 of what McCullough had agreed to pay him, but had not paid him, for the entire lease. The lease at that time was estimated by all of them to be of the value of not less than $100,000 and McCullough sold back this one-fourth interest prior to February 8, 1911, the date of the working contract, for $15,000. It is evident, therefore, that these parties claiming under the McCullough lease and claiming it to be a valid lease by their own testimony, as well as Gilcrease's, and by their own acts, conclusive evidence of their claims, and yet that lease was void under all the decisions. To claim property as against a party upon a claim void in law is in equity a fraud.

This court overlooked in its decision of this case such cases as Wagg v. Herbert et al., 19 Okla. 525, 92 Pac. 250, which went to the Supreme Court of the United States and was there affirmed in 215 U. S. 546, 54 L. Ed. 321, where the Supreme Court of Oklahoma Territory held, and it has been followed in a branch of the same case by this court, that "To insist on what was really a mortgage is a sale, is in equity a fraud which cannot be successfully practiced under the shelter of any written papers, however precise and complete they may appear to be," and that case quotes from the leading case in the United States upon the subject, Russell v. Southard, 12 Howard 139, 13 L. Ed. 927, where the Supreme Court of the United States says:

"To insist on what was really a mortgage is a sale is in equity a fraud."

The principle of these cases is identical with the case at bar. Is it more of a fraud to insist on a mortgage in the form of a deed, as was done in Wagg v. Herbert and Russell v. Southard, than to insist that a nullity is a valid lease and that a valid lease exists, and thereby obtain a contract founded upon such lease and recognizing as valid the interests therein created, or obtaining what the parties intended as such recognition, but was artfully drawn, without words of grant or conveyance, as to induce this court to hold that it is in fact a lease? In Wagg v. Herbert the court held that as Wagg had procured an absolute deed in regular form by insisting that a former deed which was given as security for a debt in fact conveyed the property, he committed a fraud, and the new deed was avoided for that reason. So good conscience dictates that in this case, when these parties insisted that the pretended lease of August 24, 1909, was a valid lease and thereby secured the working contract, termed a lease in the opinion of the court and dated February 8, 1911, they committed such fraud as would void the contract, whether considered as a working contract, governing proceeding under the lease, or considered as a lease; but in this connection let us call the attention of

the court to the difference in its construction of this contract and a similar one found in Cox v. Delmos, 32 Pac. 836, where the Supreme Court of California held that a contract between a client and his attorney which recited that the attorney was the owner of a certain judgment obtained on behalf of the client and was entitled to collect it, would be construed as merely an admission of a condition caused by prior acts and not as a grant in itself. We ask the Court to read this decision in which it is held that such instrument is void at the election of the client.

We insist, therefore, that regardless of the relation of the parties, but treating all as strangers dealing and entitled to deal at arms' length with each other, the contract relied upon to sustain the interest in these premises on behalf of defendants in error and dated February 8, 1911, is voidable for fraud on account of the parties making a baseless claim as a basis upon which it is secured, and this whether the securing of the contract was due to a mutual mistake of law, or the parties sought the advantage of Gilcrease.

But let us consider further. The value of this property was estimated by the defendants themselves at that time as $100,000. It was an equipped lease with from $40,000 to $60,000 of improvements that must be left thereon. It was drilled and producing hundreds of barrels of oil per day. The evidence as to its value at the time of the taking of the original lease of August 24, 1909, shows it to be estimated at from $60,000 to $400,000. Many wells were upon it, and the day this boy becomes actually 21 years of age he is induced to make a contract by which it is claimed that G. R. McCullough acquired a one-half and H. B. Martin a one-fourth interest, not only in the oil and gas and the profits of the enterprise, but in the actual equipment on the lease, and even the original lease of August 24, 1909, did not purport to make anyone but Gilcrease the owner of the equipment, and did not grant the equipment to anyone nor any interest in the equipment. Martin was holding Gilcrease in line by telling him he was bound by his prior contract. Gilcrease was in fact the absolute owner of this land, free of any lease, and he was under obligation to return to McCullough if he cancelled the lease, his previous existing contract, though not under such legal obligation to return $2,000 of McCullough's money which he had received on the lease of August 24, 1909.

Here, then, is a person 21 years of age on this date, owning a property which was at the time claimed to be worth $100,000 and in which they had conveyed him some time previously a one-fourth interest for $15,000, but without any new consideration and under the advice of his counsel taking the benefit and who is attorney for the other party taking the benefit, he conveys all this wealth, if this contract is to be construed as a conveyance, to his attorney and his banker for the sole consideration of the $2,000 which he has of McCullough's money.

It is conceded that Martin's advise that he had a right to deal with this property prior to this time was not proper advice, and it has been decided in this case not to have been proper advice, and decided by this court in many instances and by the United States

Supreme Court not to have been proper advice. What is the rule governing such transactions? We find it stated in Cox v. Delmos, 33 Pac. 836, as follows:

"But the utmost view that can be taken of the subject favorable to appellant's contention is this, that the attorney must show affirmatively that he gave full and proper advice in the premises and acted with entire fairness throughout the entire transaction, and took no advantage of his client."

So in Elmore v. Johnson, 143 Ill. 513, 36 Amer. St. 401, the court says:

"In case of the purchase of all or a part of the subject matter in litigation during the pendency of the suit by the attorney from his client, the transaction is presumably fraudulent and the burden is on the attorney to show affirmatively most perfect good faith, the absence of undue influence, or a fair price, knowledge, intention and form of action by the client, and also that he gave him full information and disinterested advice."

Can it be said $2,000 was a fair price for this property? Can it be said under the evidence shown in this case that Gilcrease knew the value? Can it be said that the advice given by Martin was proper advice, and yet Martin obtains this one-fourth interest under this advice, and where the whole interest passing to McCullough is secured for the $2,000 which Gilcrease has of McCullough's money? It will be noticed that there was litigation over this property at the time; not over the title, to be sure, but with Millikin, over what he should do with reference to the removal of equipment from the premises and in what condition he should leave the wells, and Martin was representing Gilcrease in that litigation, and Millikin was threatening, or at least had so threatened, if the litigation had been brought by Gilcrease, that he would wreck the existing wells upon the premises.

What is the law with reference to the dealings between attorney and client under such circumstances? In Elmore v. Johnson, supra, the court says:

"If the title to the property is so involved in litigation that the value of the property depends upon a decision as to such title, a contract between attorney and client made during the pendency of the litigation to compensate the attorney for his legal services with part of the property involved is voidable at the election of the client, irrespective of the fairness or unfairness of the contract, provided such election is exercised within a reasonable time."

In Rogers v. R. E. Lee Mining Co., 9 Fed. Rep. 721, the court says:

"A contract of purchase and sale between an attorney and client is voidable at the election of the latter where the attorney while negotiating for the purchase of the property is acting for the client in a litigation of which it is the subject matter and is called upon to advise the client as an attorney as to how far such litigation is likely to affect his title to the property, or the value of his interest in it."

In the last mentioned case in what seems would be answer to the

contention in this case that Martin was not advising Gilcrease as to business, but only as to law, the court says:

"It is true that Marshall had up to the time when negotiations for purchase by him commenced, been the attorney of complainant only for the purpose of defending her title and having no occasion to inquire into the question as to the value of the mines; but the moment these negotiations were opened the relations were changed and it became his duty to use due diligence to ascertain the value of the property as near as possible and advise complainant as her agent. It was at least his duty to suggest an investigation by the usual methods. If he had without knowledge as to the value of the property and without suggesting an investigation, advised a sale to the other party at a price which proved to be inadequate, it is clear that he would have failed in his duty, and it is equally clear that he could not purchase under like circumstances, his own ignorance as to the value of the property so far as being a circumstance in his favor is a strong reason for holding that he was bound to inform himself so as to be able to advise his client."

What the result of Martin's effort to prevent a devastation of the property would be, Gilcrease did not know. Martin knew, or should have known, that the law in Oklahoma is strong enough to protect, as it did in this case, the property from being wrecked or destroyed by Millikin, and yet instead of satisfying his client upon this proposition, it was urged as a reason why the property was not of full value.

The court in its opinion says that Gilcrease upon becoming 21 years of age, on the 8th day of February, 1911, had the right to give away his property or convey it for any price at which he saw fit. Any way, "No gratuity or gift to a legal adviser in payment of his fair professional demand made during the time that he happens to conduct or manage the affairs of the donor, will as a rule be permitted to stand; more especially if such gift or gratuity arises immediately out of the subject then under his advise, conduct or management." Evans Agency 291. See also general note upon the subject by Marshall D. Ewell, in 9 Fed. Rep. 728, where the rule is laid down:

"And generally in matters of contract between legal advisers and their clients, the legal advisers may contract with their clients only when the relation was dissolved or the attitude relating to their positions was specified."

In Valentine v. Stewart, 15 Calif. 387, the court says:

"The attorney when acting for his client is bound to most scrupulous good faith. Even when the attorney purchases the subject of the suit, the client may set aside the purchase at will, unless the attorney show by clear and conclusive proof that no advantage was taken; that everything was explained to the client, and that the price was fair and reasonable."

In State v. Johnson, 128 N. W. 837, the Supreme Court of Iowa says:

"A contract between attorney and client will be closely scrutinized and unless shown to be fair and just will not be enforced."

So in Palms, Administrator, v. Howard, 112 S. W. 1110, the court says:

"Courts will examine closely transactions between attorneys and clients to protect the clients' rights and to prevent fraud by the attorney and any disadvantage to the client from the transaction will entitle him to relief, proof of actual fraud being unnnecessary."

Many other authorities are cited in our original briefs. Here was an attorney acquiring a one-fourth interest in this property under bad advice to his client at a price so grossly inadequate as to shock the common conscience of mankind, and this on the day his client became 21 years of age and with an adverse claim to the property that he had a valid lease outstanding, when in truth and in fact the outstanding lease was utterly void and gave no rights. But under the evidence in this case, though his name does not appear in the contract of February 8, 1911, Bradshaw, the guardian of Gilcrease, was likewise obtaining a one-fourth interest, not only in the lasehold, but in the equipment upon the lease and the relation there existing between Gilcrease and Bradshaw of guardian and ward, created a condition by which Bradshaw could not be a beneficiary of this transaction. The rules governing dealings between guardian and ward are similar to those governing the relationship of attorney and client. See

Winter v. Truax, 87 Mich. 324, 24 Amer. St. 160.
Hannah v. Spotts, 5 B. Monroe, 362, 43 Amer. Dec. 132.
Wilson v. Wilson, 133 N. W. 447.
Haines v. Montgomery, 132 S. W. 650.

The rule is thus stated in Ludington v. Patent, 86 N. W. 571:

"No rule is better established than if the trustee or persons standing in a relation of trust and confidence with another deals with cestui que trust of such, either in respect to the subject of the trust for his own benefit, or that of others whom he represents, cannot be upheld if called in question by the cestui que trust, unless the trustee is able to prove to the satisfaction of the court by clear and satisfactory evidence that the two were at arms' length in the transaction; that no confidence was reposed in him by the beneficiary; that the bargain was profitable to the beneficiary, and that he was fully informed of the value of the property and the nature of his interest in it."

And on page 581 the rule is further stated:

"The trustee must show by unimpeachable evidence that the beneficiary being sui juris had full information and complete understanding of all the facts concerning the property and the transaction itself, and the person with whom he was dealing and gave a perfectly free consent, and that the price paid was fair and adequate."

In Mohler v. Sands, 133 Pac. 238, we have a similar case where a client was induced to sell to a business associate of his attorney the claim concerning which the attorney was acting, for less than its value, and although the attorney had advised the client that she would probably get her claim in full by waiting, the transaction was

held fraudulent though the fraud was much less vicious than in the case at bar.

It is not true that a person 21 years of age may give his property to his guardian and his attorney for a grossly inadequate consideration and not have the transaction subject to impeachment, either on account of the inadequacy of the consideration or on account of his ignorance of his rights or on account of the fact that the property was the subject matter of litigation in which the attorney represented him, and this even though the attorney gives proper advice, but in cases like the one at bar where he is given advice in face of decisions of the Supreme Court of his State, greater reason exists for setting aside the transaction. And then to add to all this, there is claim made under a void lease to the property and an unlearned Indian is induced to sign a contract recognizing it as valid and conveying rights on his property to others for a grossly inadequate consideration, it shocks the common conscience of mankind. But this is not all; the evidence in this case shows that Bradshaw paid nothing for his one-fourth interest. Why, then, did he get it? The evidence in this case is closely conclusive that Martin paid nothing for his one-fourth interest. Why then did he get it? It is true that there is claim in this case that Martin gave his check for $9,000 after the money in the bank to meet it and his note for $6,000 in addition, making a total of $15,000, for his one-fourth interest. Martin's evidence is that he did not have the money in the bank and that he put it in there by dribs, subsequently, to meet his $9,000 check. That this is wholly false is shown by his loss and inability to produce his bank books and by the fact that the records of the bank itself show no subsequent deposit to meet this $9,000 check, and show that on the date it was given and presented to the bank, if presented, he was indebted to the bank, had no funds there and that on that date at the close of his account there was a credit of a bulk sum of $9,000 and a debit of $9,000 offsetting it, leaving his balance against him at the close of the day the same as it had been at the opening of the day. That McCullough's account showed no increase of the $9,000 deposit; that on no other record of the bank could be found anything, or any trace of this $9,000 check; that Martin could not explain where he got it to deposit, although his account showed no other item of any considerable amount.

We have, therefore, a case in which a minor whose guardian and whose attorney each obtain a one-fourth interest in his property, worth hundreds of thousands of dollars, on the day that he is 21 years of age, without any consideration, while his banker, who is also represented by his attorney and is a business associate of his guardian, obtains the remainder for the total consideration of $2,000, when the equipment on the lease is worth from $40,000 to $60,000, and the lease itself is worth hundreds of thousands of dollars, and the banker has just sold to said minor a one-fourth interest in the lease for $15,000, the lease not carry ing any title to the equipment on the property.

That this contract was unconscionable, see the authorities cited in our Supplemental Brief, none of which have been considered by the

court in its opinion. Beginning on page 11 of our Supplemental Brief and extending to page 18 inclusive are citations of authorities which culminate in a decision of Jones v. McGruder, 12 S. E. Rep. 1282, where the court says:

"A transaction may of itself and by itself furnish a most satisfactory proof of fraud so conclusive as to outweigh the evidence of witnesses. Circumstances attending and following the transaction are often of such a character as to leave not even a shadow of doubt of the motive of the parties engaged in it. Motives and intentions of the parties can only be judged by their actions and the nature and the character of the transaction in which they are engaged. These often furnish more conclusive evidence than the most direct testimony."

These authorities cited all go to the point that inequality and gross inadequacy of consideration may of itself furnish conclusive evidence of fraud.

On page 18 of said brief and extending to page 24 thereof, is citation of authorities upon the question of "Catching Bargains," of which this case is a conspicuous example. A catching bargain is defined to be a purchase by an unconscionable agreement of an expected estate from an expectant heir, reversioner or remainderman. These contracts have been abhorred in the law from the earliest days, and yet in the case at bar we have the heir expectant on coming into possession of his property, but not yet in possession of it, and not in position to give possession of it for sixty days, and it the subject of a lease, and he, the remainderman, and the lessee in possession threatening ruin of the property, disposes of his vast estates to his attorney and his guardian, who neither pay a dollar therefor, and to his banker devises these hundreds of thousands of dollars in value in consideration of $2,000. This is a clear case of a catching bargain by a remainderman taken advantage of by those in position of confidence and trust.

We ask the Court to read the authorities cited in our Supplemental Brief and give them the weight to which we believe they are entitled.

The fact that this petition has gone to such great length prevents us from further citation of authorities and further discussion, but we have attached hereto in the form of an Appendix the material excerpts from the evidence upon the points involved herein, so that the court may conveniently consider the record. As stated in the opinion of the Court, there is little dispute as to the substantial facts. The only dispute as to a substantial fact is as to whether Martin actually paid anything for his interest. Bradshaw would not even testify as to his payment, and yet he was obtaining a secret interest under the contract relied on for rights in this case. We ask the court the reading of the record.

To hold that this transaction is not reeking with fraud is to repeal our statutes on that subject and abrogate the Decalogue and disregard every authority that has considered such transactions.

And it does not do to say in the face of the relation of the parties and in the face of the fact that Gilcrease was not trying to be a phil-

anthropist and give away his property, but was seeking to conduct a business transaction; that he had a right to dispose of his property at any price he saw fit.

True, he had a right to give away his property. True, he had a right to sell it at any price he saw fit; but when he did it under the circumstances shown in this record, he had the right to avoid it.

Respectfully submitted,

BIDDISON & CAMPBELL,
Attorneys for Plaintiff in Error.

APPENDIX.

We herewith append the portions of the testimony which we think that it is necessarily essential for the Court to read to get a proper understanding of the propositions of both actual and constructive fraud perpetrated by defendants in error in this cause on the *defendant* in error, and although it is somewhat extensive, we earnestly request the Court to read it.

Testimony as to Value.

Mr. Gilcrease, on page 343 of record, testified:

"Q. You know how many wells are being operated down there now?

A. Forty, I think."

And on page 338:

"Q. What did he (Martin) say to you about what the lease was actually in his judgment worth?

A. Well, after he came back, he had not said before then; after he came back over there, though, he told me he thought the lease was worth $100,000 in his judgment, he said.

This was at the time that Gilcrease and Martin purchased a half interest in the lease in October, 1910."

And on page 664 Mr. Martin testified:

"Q. Didn't you testify in the receivership hearing that in October, 1910, when these assignments were made by McCullough to you and to Gilcrease respectively for a purported consideration of $15,000 from you and $15,000 from Tom Gilcrease, that a half interest was in your opinion then worth $50,000?

A. Yes, that is what I thought.

Q. You thought it was?

A. Yes, sir.

Q. And you gave them a one-fourth interest then for $10,000 less than what you thought it was really worth at the time?

A. Well, of course, the question of value was a mere matter of opinion, but I thought at that time—my expectations of the lease were sanguine—I thought it was going to be a good lease and I think I said at that time I believed it was worth $100,000. Of course, I didn't know whether it was or not, but I did believe it."

On pages 338-9 Gilcrease testifies in reference to the deal in October, 1910:

"Q. Was he talking about that lease you had given them?

A. Yes, sir. He was talking about the lease I had given them. After he said they would not take that, Mr. Martin said, I asked him if he would go see them again and see what I could get for it, for he says: 'You go talk to them and see what they say.' He had already seen them. I did go and ask Mr. Bradshaw and Mr. Bradshaw says, 'Well, I don't believe I want to sell my interest in it.' He said, 'You see Mr. McCullough over there.' I seen Mr. McCullough and he told me he says I will take $50,000 for a half interest in it. I told him I says I thought that was too much money. He says, 'We don't care to sell it for that.' "

On page 812 Mr. McCullough testifies:

"Q. When did he (Gilcrease) talk to you about wanting to buy a part of the lease back?

A. Well when you say?

Q. Yes, the date as near as you can—the first occasion.

A. I think possibly along about August, 1910.

Q. In that transaction was he wanting to buy the whole lease or an interest in it back?

A. Well, he first wanted to buy the whole lease and then he wanted me to sell him an interest. He was to see me a lot of times, I expect, in two months.

Q. What was the result of his seeing you with reference to buying the lease or an interest in it?

A. The final result?

Q. No; up to the time Martin came in, what had been the result?

A. Well, I had told him every time that I didn't want to sell it, and along a little while before Mr. Martin came to me I told him if he wanted it bad enough I would sell him a half interest in it, and he wanted to know the price and I made him a price.

Q. What was the price you made him?

A. Fifty thousand dollars."

There were forty or more producing wells on the lease at the time of the transaction in question here, producing more than 300 barrels of oil per day.

On pages 384-5 Mr. Gilcrease testifies:

"Q. I will ask you, Mr. Gilcrease, if at any time you sent a representative down to sell the lease while Mr. Millikin was still operating it to learn how much oil this lease was producing. Did you do that—a Mr. Coe, to refresh your recollection?

A. Mr. Coe, he did that.

Q. I will ask you, Mr. Gilcrease, if it is not a fact Mr. Coe's reports made to you as to the production of this lease showed that it was producing about 300 barrels a day, the entire forty-two wells?

A. I don't remember just—this fellow, I know, he generally sent his reports up to you (H. B. Martin)."

Mr. L. F. Broach, Chief Clerk of the Gulf Pipe Line Company, testified as to the amount of oil produced from this lease during the years of 1911, 1912 and 1913, and the statement introduced as part of this etstimony at page 484, shows that during the months of March and April immediately after the expiration of Millikin's

lease and commencing of operations by parties to this proceeding, this lease produced 28,646 barrels of oil, approximately 470 barrels a day.

At page- 503-4 H. Y. Arnold testified that at that time, in August, 1909, producing properties were selling at from $200 to $400 a barrel daily production.

"Q. Do you know about what the value of oil producing properties in that country was at that time, in August, 1909?

A. Producing properties at that time were selling at from two to three or four hundred dollars a barrel.

Q. Daily production?

A. Yes.

Q. From $200 a barrel to $400 a barrel.

A. Up to $400 or $500 a barrel, depending entirely on the age of the property."

Mr. E. R. Kemp, an experienced oil man, testified as follows (pages 536-537):

"Q. Are you acquainted with the Gilcrease lease?

A. Yes, sir.

Q. How long have you known the property?

A. I have known it ever since I have been operating down there. I have never been on the lease itself, but I have driven alongside of it very often.

Q. Taking that lease as in August, 1909, what was a fair market value of that lease, to be left in the condition that the government leases required them to be left, about what would be the value of that lease?

A. Well, I would like to know how many wells were on the property.

Q. There were forty-two producing wells at that time.

A. And would also like to know what the production was.

Q. About twenty-five thousand barrels a month.

Mr. Martin: I don't believe there is proof of that.

Mr. Gilbert: Let it go on that basis.

A. What was the date, August, 1909?

Q. August, 1909.

A. The property was worth about two hundred thousand dollars."

John F. Hayden testified (page 541) that he would have paid for the lease at that time sixty thousand dollars.

D. F. Connelly, witness for the defendants, testified (page 582):

"Q. In your opinion what was the fair market value of the lease upon that property at the expiration of the Millikin lease (February 8, 1911)?

A. It was quite valuable, I think, at that time.

Q. How valuable?

A. Possibly worth one hundred thousand dollars."

It cost approximately three thousand dollars to drill and case a well. P. M. Keer testifies (page 499):

"Q. About what did it cost in that vicinity to put down a well at that time and case it (August, 1909)?

A. Well, I would imagine somewhere in the neighborhood of five thousand dollars.

Q. That is, including tubing, or just the well and casing?

A. Tubing and all complete.

Q. About what would it cost to put down a well and case it; just the naked casing?

A. The casing would cost about 60 cents a foot, and I think we paid 75 cents a foot for making the hole; your derrick would cost about $700. That would be about $900 for the casing, $1200 for making the hole—somewhere in that neighborhood; $700 for the derrick.

Q. In round numbers it would cost about $3000 to put a well down there and case it without putting any tubing in or anything of that kind?

A. It would cost more than that, the first well. You would have extra casing to buy—extra casing for the first well."

E. E. Stafford testified (page 529):

"Q. Do you know about what it would cost to drill a 1600-foot well and case it in the Glen pool in 1909?

A. Yes, sir.

Q. About what would it cost?

A. I should say $3,000; maybe just a little more than that, according to the amount of casing they used on them, the amount that they put in the well. Some operators operate differently."

Relation of Parties.

The defendant Martin was acting as Gilcrease's attorney in all his matters under a general retainer (see contract of employment, page 314 of the record), and had been acting as Gilcrease's attorney from the time Gilcrease first came to Tulsa in the latter part of 1908, or the early part of 1909, until a short time before the filing of this suit. Mr. Gilcrease testified, page 326:

"Q. About when, as near as you can arrive at, was the first interview, arrangement or contract with the firm of Hainer & Martin?

A. I think it was some time in January, 1909.

Q. About how long after that was it before you actually began to have dealings with Mr. H. B. Martin?

A. I think I went up the next day, the next day after I went in to see Judge Hainer.

Q. Saw Mr. Martin there, you think, the next day?

A. Yes, sir, he was there.

Q. Did you have a written contract with Hainer & Martin at that time?

A. I don't know whether it was at that time or not, I had a written contract with Mr. Martin and Mr. Hainer.

Q. Did you turn over to them your documents, deeds and papers?

A. Yes, sir.

Q. From that time did you have business dealings with Hainer & Martin, or with Mr. Martin?

A. With both of them.

Q. Did you have any place where you transacted the principal part of your business, such as you had?
A. None, except Mr. Martin's office.
Q. Did you make that your headquarters?
A. Yes, sir.
Q. Did you have a desk in that office?
A. Not at that time, no, sir.
Q. Did you ever have a desk in there?
A. Yes, sir.
Q. When did you have that?
A. I believe it was in the latter part of 1910.
Q. Were you in their office frequently from the beginning of 1909?
A. Yes, sir.
Q. Did they have any suits for you?
A. Yes, sir.
Q. Did they have any suit for you against the man who is on your lease, Mr. W. H. Milliken?
A. Yes, sir.
Q. Who attended to the matter of that suit against W. H. Milliken?
A. Mr. Martin.
Q. The defendant in this case?
A. Yes, sir.
Q. Do you recall, Tom, when that suit was filed?
A. I think it was some time probably in July of 1909.
Q. Was it before you made your lease contract to Mr. McCullough?
A. Yes, sir.
Q. Your lease contract that was made to McCullough bears date of August 24, 1909. About how long before that was it that you began to have dealings with any of the defendants in regard to that matter?
A. In regard to this suit?
Q. In regard to that lease or contract.
A. I think it was a few days."

Page 353:

"Q. Up to the time of this conversation in Mr. Martin's library and he mentioned this matter of having the lease put in the hands of a receiver, what had been the relations between you and Mr. Martin?
A. Mr. Martin had always been my best fried. If I had anything to say I always said it to him.
Q. When you made any deals or contracts or anything of that kind, did you consult Mr. Martin about it?
A. I always asked Mr. Martin about it and he always drew up the papers. I never signed anything but what he drew up the papers. He attended to everything I had to do.
Q. Had that been so from the time you went into Hainer & Martin's office in the last of January or first of February, 1909, on down to that time?

A. Well, now, for a while after I first went there Mr. Martin and Mr. Hainer both done the business, but some time later Mr. Martin he done it all himself; attended to it all."

Mr. Martin testifies at page 660:

"Q. When Mr. Gilcrease came to your office and employed the firm of Hainer & Martin he turned over to you what papers and instruments he had, did he not?

A. Well, when I came back. I was absent when Mr. Gilcrease first came to the office, and when I came back there were some abstracts as I remember there, that Mr. Gilcrease had left for examination. I don't remember any notes or mortgages being there at that time.

Q. Your firm was employed generally to look after his business at that time?

A. Yes, sir."

Gilcrease consulted Martin about making the lease to McCullough in the first instance (page 335). Mr. Gilcrease testifies:

"Q. You stated just now, I believe, you had understood that you were going to get $17,000 at once?

A. Yes, sir.

Q. Why did you say you agreed to take it in a different shape than that?

A. They said they didn't have the money for it; they would pay me $2,000 at that time and $500 every ninety days, and Mr. Martin told me, said that was as good a contract as I could get, and the best one, and he said he had put the lease up to several people and he could not get any better offer than that.

Q. That is what he told you?

A. Yes, sir."

After Gilcrease got to thinking about the matter he wanted his lease back and consulted Mr. Martin about it (page 337):

"Q. After your mother had executed that lease to Mr. McCullough, did you afterwards have any further conversation with Mr. Martin about the matter and about the question of whether you could get any part of it back?

A. Not in 1909, I don't believe.

Q. Did you at some other time after 1909?

A. Some time—1910, I believe it was—I asked Mr. Martin then if I could not get this lease back, and I told him I would like to get it back if I could and I would give Mr. Bradshaw and McCullough this money back and pay them the interest on it and give them $5,000. I believe that is what it was.

The Court: Give them what?

A. Give them their money back they had paid me at that time. At that time they had paid me some three or four thousand dollars. I told him I would give them their money back and interest on it and $5,000 profit on it if they would assign this lease back to me. That was in 1910 some time. I don't remember just when it was.

Q. What did Mr. Martin say about it to you?

A. Mr. Martin, he told me there was not any way to get it

back. He said that I was a married man and that I had given them this lease and that when I was 21 I would have to execute another lease, I believe is what he said.

Q. Was anything said about what would be the situation if you brought a suit against them to compel them to make it back to you?

A. Mr. Martin told me, said: 'You can't afford to sue them,' he says. 'You can't get it back,' he says. 'You are a married man. You gave them a lease here,' and says, 'It is a good lease.' He says, 'You can't break your contract. There is no way you can get it back.' Said it would be tied up in court six or seven years and he says you would not win it in the long run. He says if I wanted an interest in the lease it would pay me to buy an interest.

Q. It would pay you to buy an interest?

A. Rather than have a law suit. I could not get it back any other way, so he said if I could buy it it would be the best thing.

Q. Did he say anything to you about what the value of it was?

A. I told Mr. Martin I would give them this $5,000 and their money back if they would assign it over to me. He said he would go take it up with Mr. Bradshaw and Mr. McCullough and see what they said about it, and he went to see them and he told me they would not do it.

Q. What did he say to you about what the lease was actually in his judgment worth?

A. Well, after he came back, he hadn't said before then. After he came back from there, though, he told me he thought the lease was worth about $100,000 in his judgment, he said."

Mr. Martin thought he had some influence on McCullough and Bradshaw and told Gilcrease that he could make them come across, Gilcrease testifies (page 351):

"Q. And you were figuring on trying to get a lease on it?

A. Yes, sir, and so it run along that way for a few days, I don't know just how it come; some one told me; I don't know how came them to tell me, but Mr. Brown he was going to put up a check for this lease, and it was going to be sold to the highest bidder. I understood Mr. Brown was going to put up a check there. Mr. Bradshaw would say that he had money for it, and they were going to take this lease. And so I told Mr. Martin, I says, 'I want to have Mr. Bradshaw discharged and another guardian appointed and have this lease sold.' Mr. Martin said, 'Well, no, there ain't any use in that,' he says. 'He is all right.' I says, 'I want to have him discharged anyway.' He said, 'I don't guess you ever thought about it,' he says. 'I can make Bradshaw come through all right,' I says. 'I can't make him come through,' I says. 'I don't know anything on Mr. Bradshaw,' I says. 'I don't know any reason you could make him do this.' Mr. Martin said, 'You never thought anything about it. If I just mentioned putting this big lease in the hands of a receiver down there he would be all right with me.' And so that was all that was said. I went out of the room where Mr. Martin was. I got to wondering why Mr. Martin could put the lease in the hands of a receiver, and so I went to looking into it a little.

Mr. Brown—Mr. Davisson had told me before then, Dan J. Davisson, told me about Al's interest down in the lease. I don't know how he got any interest in it, but it just come to my mind about what Mr. Martin said; what he had. I knew Mr. Bradshaw had always claimed to have an interest in it. He never did tell me just what interest he had in it. I went to looking it up and found out how it all happened."

Mr. Martin testified (see page 597):

"Q. At the time of the execution of that lease, or the time of the conversation preceding it, was your advice asked by Mr. Gilcrease as to its advisability from a business standpoint?

A. Either at the time or before the time; I believe it was before this transaction ever came up, Mr. Gilcrease had asked me my opinion as to his right to make the lease on his allotment, or a sale of it, and I had given it to him.

Q. What was that?

A. Mr. Gilcrease never asked my advice about the price of the lease or about the matter of selling it at all at any time.

Q. What advice did you give him as to the legality of his dealings with his lands?

A. I told him I thought he had the right to deal with his allotment."

At the time of these transactions and while Martin was acting as legal adviser and attorney for Mr. Gilcrease, he was also acting as attorney for Mr. McCullough and for Mr. McCullough's bank, and was a stockholder. Mr. Martin testified, page 592:

"Q. Do you know when you first became acquainted with the defendant G. R. McCullough?

A. I don't know the date.

Q. About the time?

A. Oh, I know the occasion. Mr. McCullough, my first introduction to him was that he was one of several parties in a case in which our firm was assisting Hurley & Gormley to defend and I was introduced to Mr. McCullough at a consultation in regard to that case.

Q. Had you been employed by Mr. McCullough or the other parties to that suit to assist Gormley & Hurley?

A. Judge Hainer had been engaged, I think, by either Mr. Hurley or Mr. Gormley, who were senior counsel in the case. Personally I had not met Mr. Hurley or any of the parties until this consultation that I refer to."

He further testified, page 658:

"Q. Do you remember when the Bank of Oklahoma was organized? *A.* I believe you said about June of 1909.

A. That is my recollection; I think that is right.

Q. You were one of the original stockholders of that bank?

A. Yes.

Q. Mr. Bradshaw was its cashier?

A. Yes, sir.

Q. Mr. McCullough was its president?

A. He was.

Q. You had had some personal business for Mr. McCullough before the organization of that bank?

A. Yes, sir.

Q. You had some legal business for that bank shortly after its organization, did you not?

A. We may have had; I don't recall what it was now, if we had.

Q. That Bank of Oklahoma afterwards became the Oklahoma National, did it not?

A. Yes, sir.

Q. When did that occur?

A. I don't know the dates, but it was in 1911, I think in the early part of the year.

Q. The Oklahoma National had for its cashier Mr. Bradshaw, didn't it?

A. Yes, sir.

Q. And for its president, Mr. McCullough?

A. Yes, sir.

Q. You were also a stockholder in the Oklahoma National?

A. Yes, I held a thousand dollars of the stock at first when it was first organized.

Q. After that the Oklahoma National merged with or took over the First National Bank of this place, did it not?

A. Well, Mr. McCullough and his stockholders in the Oklahoma National purchased a part of the stock of the First National and the Oklahoma National was liquidated and the First National took its business.

Q. Mr. McCullough became the president of the First National and Mr. Bradshaw the cashier of it when that happened?

A. That is correct, yes, sir."

Mr. Bradshaw testified, at page 725:

"Q. Mr. H. V. Martin was a stockholder in the Oklahoma National, was he not?

A. I think so.

Q. And he took stock in the First National?

A. Yes, I think so.

Q. So that you, Mr. Martin and Mr. McCullough have all been interested in the Bank of Oklahoma, the Oklahoma National and First National Bank?

A. Yes, sir.

Q. Since the organization of the Bank of Oklahoma?

A. Yes, sir."

Mr. Martin testified at the time a fourth interest in the lease was sold him and a fourth to Gilcrease (page 609):

"But I had a small account in Mr. McCullough's bank and Hainer & Martin had an account there. We were at that time doing business for the bank—had some—we were attorneys for the bank in some matters."

Prior to the time Gilcrease made his first lease to McCullough he had conveyed this land to his mother in trust for himself and when McCullough and Bradshaw discovered this, they employed Martin to secure a lease from her. Martin testifies at page 599:

"Q. When after the execution of the lease did you next have any conversation with Mr. Gilcrease or McCullough or Bradshaw or Brown in reference to the lease?

A. Well, it wasn't long. I don't know the day, but somebody at the bank—probably Mr. McCullough—either he or Mr. Bradshaw—called me up and called my attention to the fact that they had had an abstract brought down to date covering the land, and that there was a deed appearing in it that they had known nothing about it, had been executed by Mr. Gilcrease to his mother some time before purporting to convey this land, whether the title to his mother—they didn't know who she was, but it turned out to be Mr. Gilcrease's mother, Mrs. Lizzie Gilcrease. They told me they wanted me to see Mr. Gilcrease and see what he said about it, that evidently he didn't have any title; and Mr. Gilcrease then lived in the country. The first time I saw him I called his attention to the fact that there was a deed of record conveying away this title, and that Mr. McCullough wanted something done in regard to it, and Mr. Gilcrease told me that his mother would be willing to fix the matter. And he wrote her a letter and gave it to me and asked me to go to see her at Eureka Springs and for her—she was there at that time, I think, on a visit—and have her attend to it. I did that, and gave Mrs. Gilcrease the letter at Eureka Springs, and she said then it would be all right; she would doubtless fix it up, but before doing so she wanted to consult her husband and her son both, and she came back home at the time, and went away, she said to see Mr. Gilcrease and his father in regard to this matter. It wasn't very long, probably two or three days; it may not have been so long. Mr. Gilcrease and his mother came into the office and she said that she was willing to fix the matter up, and she executed a lease that has been introduced here."

Martin's firm, Hainer & Martin, were attorneys for Bradshaw in having him appointed guardian for Gilcrease (see petition for Appointment, Nomination of Guardian, Waiver of Notice by next of kin, and Order Appointing Guardian (pages 472 to 479).

When Martin bought his fourth interest in the lease from McCullough, which he claims to have paid $15,000 for, he did not have the money and did not want to borrow the money from Gilcrease, and although McCullough was selling very much cheaper than he considered the property worth, volunteered to lend Martin the money without security.

Mr. McCullough testifies, page 817:

"Q. Now, what was the arrangement as to the payment of the Martin interest?

A. Well, Martin didn't want; he talked it over. He said he didn't want to borrow the money of Tom. He said he didn't like to handle it; it was a bigger deal than he wanted to get in behind, although he thought it was a good trade, but he wanted to handle it on his own resources if possible. We discussed that and I told him that if he wanted to I would help him in it, and did help him.

Q. Just state what the actual agreement was and if it was to be

paid partly in money and partly on time; what part was to be paid in money and what on time.

A. Well, he arranged with me at that time to make a payment, he arranged to borrow some money of the bank. I was to carry some personally. He told me at that time that within a very short time that he expected to get in some fees and money from some source or other; that he would like to leave it stand open until he could see just exactly how much he could pay and how much he would have to borrow. Well, we did leave it stand open, I think for a couple of weeks or such a matter, and he wanted to straighten it up in some way, and he told me he had been disappointed in getting some money he had looked for, and the upshot of it was I had to loan Mr. Martin all the money, practically, that went into the payment of that lease. He had some. I don't know how much.

Q. Was the part that had to be paid in cash, was that paid in cash or by check?

A. That was paid by check?

Q. Was the check afterwards paid?

A. Yes, sir.

Q. How much was that, Mr. McCullough?

A. That was for $9,000.

Q. That left what part of the purchase money unpaid?

A. Six thousand dollars.

Q. How was that evidenced?

A. Well, he gave me a note for it.

Q. Was that note subsequently paid?

A. Yes, sir."

Bradshaw never paid anything for his interest. Mr. Bradshaw testified at page 725:

"Q. You didn't pay but $2,000 when you took this lease from Mr. Gilcrease in Mr. McCullough's name, did you; Mr. Gilcrease was only paid $2,000 at that time, wasn't he?

A. Mr. Gilcrease was paid $2,000, yes, sir.

Q. The remaining payments were to be made in $500 installments?

A. Yes, sir.

Q. How much of that $2,000 did you contribute?

A. I didn't pay anything.

Q. Didn't pay any of it?

A. No, sir.

Q. You testified on the hearing before that occurred when we applied for a receiver that you were interested in the lease from the beginning. There were several succeding payments made before assignments were made by McCullough to Martin and Gilcrease that are in evidence here, amounting to some $2,000 more. What part of that did you pay?

A. I didn't pay any of it.

Q. You didn't pay any of it?

A. No, sir.

Q. Do you know who did?

A. Mr. McCullough paid that.

Q. Mr. McCullough paid that?

A. Yes.

Q. When did you first pay anything on account of this matter and how much?

A. On account of which matter?

Q. This matter we are talking about right now, this lease?

A. Who to?

Q. Anybody.

A. Well, I don't remember the time I paid nor the amount."

We think a reading of the testimony will show conclusively to an unbiased mind that Martin never paid a cent for his interest in the lease, and to show this it will be necessary to set out the testimony of Martin and McCullough almost entire.

Mr. Martin testified, page 666:

"Q. Now, Mr. Martin, with reference to your check for $9,000 that you *have* on the 22d of October, 1910, when these assignments were made from McCullough to you and to Gilcrease and which you have put in evidence here—that check bears date 22d of October, the same day that these leases were made, does it not?

A. Yes.

Q. It is stamped paid the 3rd day of November?

A. Yes, sir.

Q. Isn't it a fact that your account was overdrawn at the Bank of Oklahoma on the 20th day of October, 1910, by a hundred and thirty-odd dollars, and that it continued to be overdrawn from then down to the 3d of November, 1910, the day this check was stamped paid?

A. That is true, yes, sir (667).

Q. I will ask you if you didn't testify as follows, with reference to the matter, at the hearing we had upon the application for the receiver in this case: 'Yes, I looked around to see how much money I could get and I talked to Mr. McCullough as to whether or not I could get credit with him for a part of it and he said that I could, that he would, that if I wanted to buy it that he would carry me for some of it until I could pay it, and we finally agreed on that proposition; Mr. McCullough selling to me a fourth of it and selling to Mr. Gilcrease a fourth of it. I paid Mr. McCullough $9,000, as I remember. It was this way; I didn't have that much money in the bank at the time, but I expected to have considerable money coming in. I had some money. I had some places I could get money besides, and just about that time Judge Hainer had closed up his relations with the Haskell case he had been in the prosecution, and of course the firm was entitled to the fee. He hadn't made—sent in a claim and corresponded with reference to the amount of the fee. His employment was that, that *is* fee should be fixed by the Attorney General after the services were completed, and the claim made by the Judge was $10,000. I expected that that claim would be allowed, but it was not. It was cut down, I think it was to $3,500, and that amount of money—I didn't get as much money from that as I had expected. However, I had a good deal of money coming from my business in the west side and some money, anyway, on hand. I gave

Mr. McCullough a check for $9,000 and I told him I would have the money in the bank to meet the check in a few days, and I did. The check was paid I think maybe ten days after it was given. I also gave Mr. McCullough my note for $6,000. I don't remember how long it ran now, maybe three months or more than that; at any rate it was renewed and payments made on it from time to time, and it is now all paid to him, but I borrowed some of the money to pay it from the bank, which I owe the bank, and maybe a bank in Kansas City. However, the transaction as far as Mr. McCullough is concerned and me, is closed up. We went along there after that was done till the Millikin lease expired, which was the 8th day of February, 1911.'

A. I think that is substantially what I said.

Q. You testified today, as I understood you, after the giving of that $9,000 check you had some time subsequently, about the 3d of November, when that check was paid, arranged for a credit of that amount at the bank down there?

A. No, I didn't testify to that.

Q. That was what I understood you to say.

A. No, sir.

Q. What did you say?

A. I said I didn't have enough money coming in to meet the check; that I did have some money coming in, and that I borrowed some money from the bank; that I was unable to tell the items constituting the entire amount of money; that is what I said today and what I said now.

Q. You didn't mention in your other testimony anything about borrowing any money from the bank to take up that check.

A. I didn't in what you have read, Mr. West. I may have mentioned that in the testimony; I don't recall now whether I did or not.

Q. You say the other $6000 was borrowed at the time you made this transaction?

A. Yes, sir; that is, it was not borrowed, but I owed that amount of money to Mr. McCullough.

Q. Didn't you testify in this that I have just read that you got $6,000 and gave him your note for $6,000?

A. Yes, that was for what I owed him in addition to the $9,000 check?

Q. Didn't you testify in the other examination that you got $6,000 of that money from a bank in Kansas City?

A. No, I got $5,000 from the bank in Kansas City.

Q. Five thousand dollars?

A. Yes.

Q. Was that on your own note to that bank up there, or did you give the note to Mr. McCullough and did he send it up to the bank in Kansas City?

A. I don't remember now whether in the first place I gave a note to Mr. McCullough or the bank. At any rate, some time I gave this bank in Kansas City my note direct, that is the Commercial National Bank; I have since paid $2,500 on the note and I still owe $2,500 on it.

Q. Had you ever borrowed any money from that bank?
A. No.
Q. Were you acquainted with that bank?
A. No.
Q. Mr. McCullough got you the money?
A. It was on his recommendation.
Q. On his credit?
A. Yes.
Q. You still owe $2,500 of that money up there?
A. Yes.
Q. At the time you testified in the receivership hearing you owed some bank here a like amount of money?
A. Well, no; I owed the bank here more than that. The First National Bank I owed at the time of this other hearing I think $4,700 or $4,600 perhaps, on my own notes, and $2,000 on Hainer & Martin's notes. Since then I have paid $2,000 on my notes and paid $1,000 on the Hainer & Martin notes, is my recollection of the situation.
Q. Have you gotten that note back from the bank in Kansas City—the original?
A. It came back. I renewed it for a smaller amount when I made a payment on it. I don't know whether I have it or not. I don't keep cancelled notes ordinarily. I don't think I have it.
Q. If you have Mr. McCullough himself any note originally in this transaction, that note to McCullough you say has been paid?
A. Yes, it was paid.
Q. You got it back then, did you?
A. I think it was given to me.
Q. Do you know where it is?
A. I don't believe I have it I might have it, but I didn't at that time especially keep any cancelled notes. I tore them up when they were paid. I don't keep a note file at all, and if I have it it is merely accidental, and I don't know that I have it.
Q. And I believe I asked you about, when you were put on the stand as a witness for the plaintiff, if you had any stubs corresponding to this $9,000 check, and you said you didn't.
A. The check is written on the stub blank and I didn't keep any personal stub book. Recently I have had a big printed—that is, a regular check book from the First National Bank. It has a stub book, but until then I never used a stub book.
Q. And you haven't got your bank pass book covering the period?
A. Not the old one. I have my pass book with the First National Bank for the last couple of years, I guess.
Q. I will ask you to look closer at that and tell me if it is not a Hainer & Martin check, that is, your name is signed to it, drawn on one of their checks, and if it is not torn out of a book with the name 'Hainer & Martin' printed on the——
A. Yes, but that hasn't anything to do with the stub, because the stubs were only kept for the Hainer & Martin checks, and if we took checks out of the back of the book or anywhere for other use than the firm account, you wouldn't fill out the stub.

Q. The reason I asked you that, Mr. Martin, you said a moment before that check was not written on a check that came out of a book, but on another kind of a check.

A. I think you may put me in error on that. I notice it is written on that kind of a check. I didn't remember that."

And Mr. Martin testified further, on page 690:

"Q. Let's go back now, Mr. Martin, to the $9,000 transaction, and I would like for you to tell me the items, as nearly as you can give them, of which the $9,000 that you say you put into the bank to meet that check, was made up, and where you got them?

A. I am unable to do that, sir; I can't tell you.

Q. You can't do it?

A. I know that I had some checks. I think I borrowed $5,500 at the bank at the time; but it is absolutely impossible. I have tried to think of what it was, and I can't tell those items. I had no reason to charge my memory with it at the time, and I never had any reason to think about it until this suit was brought, and that was long afterwards, and I cannot remember what those items were.

Q. Can you give any items of considerable amount that went in; $5,500 would still leave $4,500. If you borrowed $5,500 from the bank at that time?

A. It would simply be a conjecture if I did. I think—I have an impression, although I don't know it to be true, one of those things was Mr. Gilcrease's check for a few hundred dollars, but I don't know about that. I am unable to locate it definitely, but I think that included in that was one of his checks. He could probably ascertain if it was true.

Q. Do you frequently make deposits of your own money amounting to even as much as $3,500 in one day?

A. I have done it very often.

Q. Very often?

A. Yes.

Q. Will you get your account and show us where you have done that at other times, of money; not money you collected for clients or anything of that kind, but money that belonged to H. B. Martin individually?

A. I think my account will show several transactions of that kind, yes, sir.

Q. How much was the check you think Mr. Gilcrease gave you?

A. I don't know, sir. I am not even certain his check was in the amount, but I think that it was.

Q. You don't know what it was for?

A. No, it was probably a Hainer & Martin check, if it was in there, and likely was on some of the obligations that he owed the firm. I will say this, too, Mr. West, that the money, Hainer & Martin money, didn't go into the firm account always. Sometimes I would use a check and sometimes the Judge would. We didn't keep this bank account very correctly as to the firm funds. We were a little careless about it, a little indulging to each other's needs at the time.

Q. What fee of any considerable size did you get for Hainer & Martin on the 3d of November, 1910?

A. I don't know. I say, if Mr. Gilcrease's check was in there, it was probably on account of one of the fees he owed to the firm. He did pay from time to time fees he owed the firm.

Q. You didn't have any big fees coming at that time from Mr. Gilcrease?

A. I don't think so.

Q. If you had any check of his it was for a small amount; it was not over $100 or $200?

A. It might have been $50, it may have been several hundred dollars. Mr. Gilcrease has paid the firm some fees——

Q. This suit has been pending a little over a year, Mr. Martin, hasn't it?

A. Yes, sir.

Q. A good deal of this ground was gone over in the application for a receivership, now just about a year ago?

A. Yes.

Q. And inquiry was made of you about these things at that time?

A. It was, yes.

Q. You haven't been able to refresh your memory or to trace in the year that has elapsed anything about the sources from which you got that money?

A. I can't remember it definitely, sir. If I undertook it it would be guessing, and I might make a bad guess." (693.)

Mr. McCullough testified, pages 824-838:

"Q. When did the defendant Martin first begin doing a banking business with your institution, the Bank of Oklahoma?

A. I think it was shortly after it opened up.

Q. He was a stockholder in it from the commencement?

A. Yes, sir.

Q. Prior to the time of a sale by you to Martin and Gilcrease of an interest in this lease, had Mr. Martin's balance at your bank at any time ever been any considerable amount?

A. Well, I don't know that it had; I never looked that up to see.

Q. Well, it never had run over a very few hundred dollars at any time, had it?

A. Oh, I think so.

Q. At that time did you know anything about Mr. Martin's assets?

A. At the time—what time are you speaking of?

Q. At the time you were selling him and Gilcrease an interest in this lease?

A. Yes, I think I did.

Q. About what did you know that Mr. Martin had at that time?

A. Well, he had a good practice was one thing he was interested——

Q. Been here since late in the fall of 1908?

A. I don't know when he came here, but I had talked to Judge Hainer about him and satisfied myself he was absolutely all right.

Q. About what assets did you know of Mr. Martin having at that time?

A. I can't recall now just——

Q. Can you recall of a single piece of property on earth you knew he owned?

A. I can't recall it now.

Q. Did you at that time know of any property that Mr. Martin owned outside of his household goods and law library?

A. I satisfied myself at that time thoroughly that I wasn't taking any chances on Mr. Martin.

Q. He rented his home here in the city?

A. I don't know.

Q. You didn't know of his owning any property here in the city at that time?

A. I don't know; he owns his home now. I don't know whether he did then or not.

Q. And you didn't at that time know of any assets that he had excepting his law library and his practice?

A. I think I have answered that pretty thoroughly. I told you that I couldn't tell you of any specific property that he owned.

Q. Did you know that he had anything?

A. I satisfied myself fully as to whether Mr. Martin was entitled to any credit, if that is what you are getting at.

Q. But you can't call to mind that you knew at that time that he had any property at all, can you?

A. I don't recall of any specific piece of property, no. Don't know now, I couldn't tell you now; only he happens to own the house I used to live in.

Q. And at that time you made an arrangement with him, at the time you made this transfer to him and Gilcrease, made an arrangement with him that he would pay you a certain portion of the purchase price in cash and give you a note for the balance?

A. Yes, sir.

Q. But at that time the amount was not determined as to how much he would give you in cash, nor how much—it was to depend on how much money he could put in?

A. I think it was; I think we agreed at that time how much I was to loan him. He was depending on getting in the balance of the money from some other sources, and then when the time did come probably I loaned him more money than I figured on at the start of it; I remember that.

Q. Do you recall how much money you agreed to loan him at that time?

A. I think it was $5,500, or something of that kind.

Q. Now, were you to make that loan individually or were you to loan it for the bank?

A. I was loaning it for the bank.

Q. But you had afterwards to loan him a greater sum of money than that?

A. Yes, sir.

Q. Well, did you loan him $5,500 at that time?

A. No; I let the matter stand open for a few days to wait to see what he got in in the way of collections?

Q. About how long did you let it stand open before you made the loan?

A. My recollection is, a couple of weeks.

Q. And at the expiration of a couple of weeks you loaned him about how much?

A. I can't tell you the exact amount, but my recollection is that it was in the neighborhood of $7,500 or $8,000, I don't remember.

Q. And what security did you take to the bank on that loan?

A. I took his note.

Q. Just his personal note?

A. Yes, sir.

Q. And you took his personal note for $6,000 at the time?

A. I did.

Q. So that when you made him this loan he gave you some cash to make up the balance?

A. Yes, sir.

Q. But you don't know the amount of that loan?

A. He gave me a check for the whole thing. He made up the balance, whatever it was, up to the $9,000. I don't know where he got that or anything about it.

Q. And that loan was made by the bank?

A. I think I divided that loan. I think I sent part of it to Kansas City and kept part of it here. I don't remember about that.

Q. Well, the loan, whatever it would be, was not made by the Kansas City Bank; it was made by this bank and then by this bank endorsed over to the Kansas City Bank?

A. It was made to the bank. They carry those things on my recommendation. If I send them a note they take it without any recommendation.

Q. And your recollection is now that Mr. Martin made this note direct to another bank in the first instance?

A. No; I think I divided the loan. I think that I carried $5,500 here with this bank and the balance of it was carried out of town.

Q. Do you know by what bank it was carried?

A. By the Commonwealth, Kansas City.

Q. The Commonwealth National, Kansas City?

A. Yes, sir.

Q. It was divided, as you recall now, in two loans?

A. I think it was, yes.

Q. Do you recall so that you can distinctly remember the fact that the Commonwealth National Bank of Kansas City loaned Mr. Martin some money about that time?

A. Now, it might have been the National Reserve Bank. At any rate it was—G. M. Smith was the man I dealt with; it was one of those banks.

Q. You are absolutely certain of the fact now one of those banks arranged through G. M. Smith to take up Mr. Martin's loan for a part of this money about that time?

A. I think so, yes.

Q. You are certain of it?

A. Well, that is my recollection that that is the way it was handled. I know I have borrowed for Mr. Martin of that bank and those two banks, and I think possibly the Bank of Commerce a number of times. He has a note up there now.

Q. And as a matter of fact isn't it true that they never carried any of Mr. Martin's paper until you consolidated with the First National Bank?

A. No, I think they did.

Q. You think they did?

A. Yes, sir.

Q. Are you certain they did?

A. I think I am, yes, sir.

Q. And you are satisfied that your bank prior to the time of the payment of this check took Mr. Martin's paper for some $5,500?

A. Here, you mean?

Q. Yes.

A. Yes, sir, I know I made him a loan of something like that amount.

Q. Does that loan appear upon any of the books of your bank?

A. There isn't any of our loans appear on the books of the bank.

Q. You don't keep any note or bill payable register?

A. I didn't, no, sir, at that time.

Q. You didn't keep any bill payable register at that time?

A. Bills payable register?

Q. Bills payable register. Was that while you were a national or a state bank?

A. State bank.

Q. So that there is no record of any book of your bank that you made a loan to Mr. Martin of $5,500 about that time?

A. There isn't any record we made anybody a loan of any amount for the reason that the manner in which we handled that branch of the business——

Q. Do you know the date, or is there in your bank or among your records anything that will show the amount or the date at which you let Mr. Martin have that money?

A. Why, no, sir, I don't suppose there is, outside of Mr. Martin's account.

Q. Have you no statements of your bank as to the bills receivable between the 22d of October and the 3d day of November?

A. Bills receivable?

Q. Yes.

A. Well, I don't know.

Q. Have you no schedule or record by which you could tell when any note became lost, or what number of notes you had or by whom they were payable?

A. We keep our notes in duplicates and keep a copy of every note and kept them in separate cases.

Q. And that was the only memorandum you had by which you could tell what notes you had in the bank?

A. Yes, sir.

Q. Do you know whether the $5,500 you loaned Mr. Martin was credited to his account upon the day that it was loaned?
A. No, I suppose it was; I don't——
Q. Did you keep any cash book about that time?
A. No, sir, we have no cash book.
Q. Did you keep any record or memorandum of the amount of cash that came into the bank or that was paid out of it?
A. Nothing more than the balance sheet the boys used each day; they balance up their cash.
Q. Would there be in your bank any record showing whether or not the $5,500 was the property of the bank or was a deposit in the bank?
A. I don't believe I understood your question, sir.
Q. You say that you loaned Mr. Martin out of that bank $5,500?
A. I think that is the amount, yes.
Q. Would there be in your bank any record that yould show whether or not that $5,500 which would remain in the bank was the property of the bank or was the property of Mr. Martin?
A. Certainly; we would have the note and his account would have credit for the proceeds.
Q. That would be the only thing, would be his note?
A. That would be all.
Q. And the only entry on the bank books would be an entry to his account?
A. I think that is right, yes, sir, on our ledger and on his bank book.
Q. And you used the loose leaf system of ledger?
A. Yes, sir.
Q. Did you never make up any statements *of* schedules of the bills receivable in the year 1912?
A. Oh, yes, we balanced them up.
Q. Would they show who owed the notes?
A. No.
Q. Just simply be a list of amounts?
A. Yes, sir.
Q. When you passed the $5,500 to Mr. Martin's credit, was there a corresponding entry made in any other account of the bank?
A. That deposit was all made at the same time. When he got ready to close the deal up and fixed it all up at once, the deposit was $9,000.
Q. Under the system of bookkeeping you had, was there no other entry made on any of the books or records of that bank?
A. It was credited on his pass book, yes, and put on our deposit ticket and put on our ledger.
Q. And on the ledger?
A. Yes, sir.
Q. That is to his account?
A. Yes, sir.
Q. But would there be no other in there than to his account?
A. None whatever.
Q. There was no charge of that amount when you gave him

credit for it; there was no corresponding charge made anywhere to any other account?

A. Yes, whatever amount of cash he put in, whatever amount of notes, of course, offset his deposit.

Q. But there was no other record made of it?

A. I don't know. I don't see the necessity of it.

Q. You didn't charge bills receivable with that amount of cash?

A. With that amount of cash.

Q. Yes.

A. We charged bills receivable with that amount.

Q. You charged bills receivable with that amount?

A. Yes.

Q. Where is that bills receivable account?

A. We don't have any book of it.

Q. What was it?

A. It was a lump amount; the entire one item.

Q. Have you a book in your bank in which you keep a bills receivable account?

A. No, sir.

Q. Did you at that time?

A. No, I think not.

Q. Then where was the memorandum that is charged to bills receivable, that $5,500?

A. I suppose there was some record of that; of course there would have to be a record of the total amount of bills receivable.

Q. Where would that be?

A. I suppose it would be in the bank.

Q. And bills receivable account, charged with the amount of Mr. Martin's——

A. It would be all in one item, of course it would show on our books somewhere, yes.

Q. It would show on your books just simply as the total amount of bills receivable.

A. The total amount of bills receivable.

Q. That would be all it would show?

A. If a note was paid the copy was stamped paid and turned in to the clerk; if a new note was made the new copy was turned in to him so he balanced that——

Q. And he made an entry upon some book of the bank?

A. If it was renewal, there would be no charge then.

Q. But whenever a note was made he made some entry upon some book of the bank of the amount of that note?

A. Why, yes.

Q. No-, on what book did he make it?

A. I don't know.

Q. You don't know how that note was kept at all?

A. No, I don't know.

Q. Can you have the books procured here?

A. I don't know that I can.

—. —.

Q. Why, I haven't seen it: I don't know anything about it.

Q. You have never seen any such book?
A. No, sir.
Q. Then you don't know it existed?
A. No, but naturally there would be some record of it, of course.
Q. You don't know what kind of a book or what kind of an account the bills receivable were kept in your bank?
A. Of course, we had to keep the total amount of our bills receivable.
Q. Now, was there any record kept in that bank which showed the amount of cash on hand and the amount of bills receivable, so that you could make up your statement of assets from it?
A. Yes, sir.
Q. You kept that in some way separate, then?
A. Yes, sir.
Q. Kept a cash account?
A. Yes, I suppose you would call it a cash account.
Q. Would that cash account show the amount that was on deposit in the bank?
A. Show the amount of cash, actual cash, we had in the bank.
Q. But it wouldn't show how much was from depositors' accounts or how much was in the bank?
—. The deposits would be shown, the total amount of cash in the bank and the total amount of cash with corresponding banks.
Q. Do you recall the date of the Martin note to the bank?
A. No, sir.
Q. Do you know when it was paid, this $5,500 note?
A. No, sir.
Q. Was there any security given to you for the $6,000 note?
A. No, sir.
Q. Calling your attention to Defendants' Exhibit 3, when did Mr. Martin give you that check?
A. It is dated on October 22, 1910.
Q. Is that the date that he gave it to you?
A. I can't tell you; I presume it was.
Q. It is marked paid on November 3, is it not?
A. Yes, sir.
Q. Was that check paid by your bank on that date?
A. Yes, sir.
Q. The check bears your endorsement; was the check paid directly to you?
A. Yes, sir.
Q. In what way was it paid to you, Mr. McCullough?
A. In what way was it paid to me?
Q. Yes, sir.
A. Let me understand your question.
Q. I want to know in what way that check was paid to you; did they hand you out the currency?
A. No, sir; I took credit for it.
Q. You took credit for it on the books of the bank?
A. Yes, sir. (835.)
Q. And have you your pass book covering that day?

A. No, sir.
Q. Have you your account of that date?
A. No, sir.
Q. Has the bank your account of that date?
A. Yes, sir, I think so.
Q. Have you brought those books into court?
A. Yes, sir, I brought all the records.
Q. I will ask you to bring me that account. I will ask you to examine this book which you have produced and turn to your account for the month of November, 1911.
A. November?
Q. Yes.
A. I will say to start with that the Bank of Oklahoma was liquidated something over two years ago, every account was balanced and new pass books were issued and the old ones were taken up. If you remember, in the trial of the other case, the receivership case, you called for this account. We took you and Mr. West down to the bank and showed you the record, and you asked for a copy of these accounts and they were given to you at that time, from October 1 up till some time in November. Now you remember also the condition of those records at that time. You had quite a difficulty in finding what you wanted. They were not down in book form like this, but were absolutely loose and stored away under the counter and everywhere. Now the only thing I have been able to find is this book with reference to this matter. This commences here on November 21st, 1910, and goes down to February or March, 1911.
Q. You say it begins in November, the 21st?
A. Yes. Now you have a copy of these accounts and examined them yourselves from October 1st up to this date.
Q. I will ask you, have you any of the books or records of your bank showing your account, your personal account with that bank up to and including November 3d?
A. Unquestionably, yes.
Q. I will ask you to produce it.
A. I am unable to do it, sir. I have searched last night and this morning both. As I told you, those were records we had absolutely no use for; they had been stored away in the basement of the vault. We have had four consolidations extending back over a period of ten years, and if you and Mr. West will remember the condition of those things and the trouble we had in finding them once before, a year ago. At that time you examined them and took copies, and I think you have the copies, because you referred to them this morning.
Q. Referring to this transaction a year ago, I will ask you if upon that examination you were not asked then to produce this identical account?
A. And we gave you a copy of it and showed you the record.
Q. And isn't it a fact that you said at that time you would produce the books in court?
A. No, sir; you didn't ask for them that I know of. You were perfectly satisfied. You came there yourself.

Q. And then wasn't it that the stenographer of the court was sent down there to get those accounts and you told him to go to hell, you weren't digging up evidence for Gilcrease?

A. The reporter of the court won't say so. He is right here, and he won't say so.

Q. We will see.

A. I never said that to a man in my life.

Q. Now, isn't it a fact, Mr. McCullough, that at that time that account didn't show any credit of the $9,000 either on, before or after the date of November 3d within a month?

A. Yes, sir, it showed that and you know it. You saw it yourself with your own eyes and know it absolutely.

Q. And isn't it a fact, Mr. McCullough, that at that time that the only entry that could be found of that $9,000 on the books of the bank was on the 3d day of November, at the last end of Mr. Martin's account, $9,000 credit and right immediately opposite $9,000 debit, not changing his balance a particle?

A. That is a fact, yes.

Q. And that was absolutely the only entry on that date of a $9,000 item?

A. On his account.

Q. On his account or anybody else's?

A. Yes, it was on my account and you know it, and you looked at it and got a copy of the account.

Q. Have you the books and records of your bank that you can produce here showing the bills receivable account for October and November of 1911?

A. Nineteen eleven?

Q. Yes, sir.

A. What time in 1911?

Q. October and November, 1911.

A. I presume I have. I haven't looked.

Q. Nineteen ten, I mean.

A. That would cover this part of it here, if that is what you mean.

Q. Has that got the bills receivable account in it; that is what I am asking for?

A. I don't know anything about that record. I never kept it, and I don't know anything about it.

Q. Well, can you have that book produced?

A. I can try to have it produced. I can't tell you. I will make an effort.

Q. Mr. Martin's account on that date, November 3d, was already overdrawn, was it not?

A. I think that is what it showed, yes, sir.

Q. And it was overdrawn the same amount according to the books of your bank that night when you closed business?

A. Yes; I don't think there was any change.

Q. And opened up overdrawn the same amount the next day and remained overdrawn for some time thereafter?

A. Well, I don't remember about that.

Q. Until some time thereafter he got a half of the fee in the Haskell case and deposited $1,275?"

And further on page 847 as follows:

"Q. Mr. McCullough, these accounts, books and so forth that are in the banks are the books of the bank that have gone out of existence, are they?

A. Yes, sir, records we have absolutely no use for whatever.

Q. When these banks became consolidated, you transferred the total amounts from the books of the old bank to the books of the new bank?

A. Yes, sir.

Q. And had no further need to recur to the books of the old bank?

A. No, sir; every account is balanced out and closed and pass books were taken up and new ones issued.

Q. New pass books issued and the accounts carried onto the ledger of the bank which has absorbed the previous bank?

A. Yes, sir.

Q. It was asked you, Mr. McCullough, if the credit to Martin of $9,000 which is simply on the statement of his account as a lump sum of $9,000?

A. Yes, sir.

Q. If a man goes into a bank and deposits $9,000, how would it otherwise appear, or different than it was entered on this account?

A. It would not appear any different.

Q. That would be the usual and ordinary way of entering it?

A. Yes, sir.

Q. You say you have looked for your individual account during the first part of the month of November, 1911, is it?

A. The leaves just preceding this record here are the ones I was unable to find, and they are the ones that were loose, unbound.

Q. And you looked for it and you say you couldn't find it?

A. Yes, I was unable to find those.

Q. But you did, you say, at the other trial show that account?

A. Yes.

Q. To Mr. Biddison?

A. Yes, sir, these two gentlemen. Mr. West and Mr. Biddison came right in our office and hunted these accounts up, or we hunted them up for them and showed them to him and made copies of them.

Q. Did your account show a credit to your account on the 3d day of November, 1910?

A. Yes, sir.

Q. And you mentioned that they saw it themselves?

A. Yes, sir.

Q. They saw that themselves and they took the statement. They took a copy of the statement?

A. Yes, and this is the first time I have ever heard of any different. They made no complaint at the other time about not seeing them."

And further on page 851 as follows:

"Q. I will ask you if on the examination by your counsel, Mr.

Gilbert, at the hearing upon the application for a receiver, you didn't give the following testimony:

'Q. Your books do show Mr. Martin paid to Mr. Grant R. McCullough $9,000 on the 3d day of November, 1911?

A. The books don't show who this was paid to.

Q. They do show there was $9,000 paid by Mr. Martin to someone?

A. Yes, sir, there was a check paid of $9,000 on that day.' Wasn't that your testimony?

A. That is my testimony. The check was in evidence, showed who the check was paid to. The book doesn't show a single item of who it was paid to.

Q. Now, then, at that time, wasn't this question asked by Mr. West: 'I would like to ask further that you produce Mr. McCullough's account of November 3d, 1910.' And Mr. Gilbert says: 'No objection at all. The books and bank and everything else you have got you can have.' The Court said: 'Bring them up, Mr. Bradshaw, so they can be filed.' Mr. Gilbert: 'That is all'? I will ask subsequent to that, when the stenographer went down to get those you didn't absolutely refuse?

A. No, sir.

Q. To let him have anything to do with it, or furnish him any information in regard to it?

A. No, we did not. We had trouble in finding these records and it took us so long to find them you and Mr. West came down there and we found them together, and you know it, and you examined the accounts.

Q. Mr. McCullough, do you say you were there in the bank and present with Mr. West and I watching?

A. I was in the bank. I was up in my office in the bank and you and Mr. West and Mr. Bradshaw and some of the clerks were in there hunting for this stuff.

Q. We were in the vault?

A. Yes, sir.

Q. And you were up in your office?

A. Yes, sir.

Q. And there was no conversation between us and you were not present in the vault when you saw what we examined.

A. No, I know."

Mr. J. D. Payne testified on page 854 as follows:

"Q. Are you the same stenographer that took the evidence in the Gilcrease case on the application of the hearing for a receiver?

A. Yes, sir.

Q. Did you go to the bank of Mr. McCullough for the purpose of getting a copy of the statement of the account of Mr. Martin and Mr. McCullough, or either of them?

A. I called on them for the copy of the account of Mr. McCullough and Mr. Martin of the dates a statement I had with me then showed, and I took that from the record of the case. I don't remember those dates now.

Q. Did you have any conversation with Mr. McCullough and ask

for these accounts in which he told you to go to hell, that he wasn't furnishing evidences to Gilcrease?

A. I don't think he used that language.

Q. What did he say?

A. I don't remember whether it was Mr. McCullough or Mr. Bradshaw, but they told me that I couldn't have the accounts; that they weren't furnishing Tom Gilcrease any evidence.

Q. Do you know whether that was Bradshaw or McCullough?

A. No, I don't remember, but they were both right there together.

Q. You say you had a statement of the account?

A. No, sir; I had a statement of some things that had been asked for on the trial of the case in the record, and which I understood I was to get and put in the record.

The Court: You what?

A. I understood I was to get these things and put them in the record, but they were not produced on the trial.

Q. Did you tell Mr. McCullough or Mr. Bradshaw who sent you or if you came under the order or direction of the court, or anything?

A. No, I told them I wanted these things because they had been asked for on the trial; they were asked for on the trial.

Q. They were asked for on the trial before the examination of the accounts of Mr. Biddison, had they, or before you got in possession of the statements you did have?

A. The demand was made at the hearing; while I was making up the record I wanted these things to complete the record.

Q. And on that occasion didn't Mr. Bradshaw tell you that Mr. West and Mr. Biddison already had copies of them.

A. I don't know; they said something about Mr. West and Mr. Biddison being down there, but I don't remember what it was."

P. C. West testified, page 862, as follows:

"Q. You were present at the hearing of the application for a receiver in this case?

A. Yes, sir.

Q. Representing Mr. Gilcrease?

A. Yes, sir.

Q. I will ask you if at any time there has been given to you or has come into your hands any statement of the account of G. R. McCullough in the Bank of Oklahoma for the months of October and early part of November, 1910?

A. No, sir, there never has been at any time furnished to me any copy of that account, and I am very positive that I have never seen at any time any copy of that account, or what purported to be a copy of that account. I recollect that after we had concluded most of the evidence, possibly all of it, I know it was pretty late in the evening. You and I went with Mr. Bradshaw down to the bank and went into the vault and that I did see the original, or what purported to be the original of Mr. Martin's account, but I have no recollection of at that time, or at any other time seeing Mr. McCullough's account, and I know that no copy of it has ever been furnished to me, and I have never seen a copy of it. There was brought up to the court

room, if I recollect correctly, a statement of Mr. Martin's account showing the check on one side and the deposits on the other which had all the items in it that were on the account. That I saw down at the bank for the period covered, but wasn't in the same form that it appeared on the sheet like this down at the bank.

Q. I will ask you in what form or in what manner the $9,000 debit and $9,000 credit on the 3d day of November appeared on that account that we saw in the vault of the bank?

A. The sheet as I recollect it, was one similar to this and the items were across the page, and on one of these columns here appears $9,000 credit and a $9,000 debit immediately together and the extension of the balance of that day was exactly the same with or without that item—those two items."

Mr. A. J. Biddison testified on page 866 as follows:

"A. Have you been an attorney in the case ever since the inception of these proceedings?

A. I have been.

Q. Were you present at any part of the receivership hearing that was had about a year ago?

A. I think at all of it. I may have stepped out of the room for a moment or two; I was there most of the time.

Q. To refresh your recollection, isn't it a fact that during the first day, or part of it, you went away somewhere and then that you came back and remained with us until the proceedings were concluded?

A. That might have been the situation. I know I was there during a considerable portion of it. I don't recall; I had given attention to it for some time, I know.

Q. Were you there at the time the matter of the payment of the $9,000 by Mr. Martin to Mr. McCullough was inquired into?

A. I was.

Q. Do you recollect going to the First National Bank building and making an examination of records down there?

A. I do.

Q. Do you remember who was present at that examination?

A. Mr. West, yourself and Mr. Bradshaw took up into the vault, as I recall, and called some clerk whose name I didn't know and don't know that I would know it now. It might have been some man I was well acquainted with, but some other person; and Mr. Bradshaw went out of the vault during most of our examination and left us with this other party. He either went out of the vault or stepped back toward the door of the vault, I don't recall which.

Q. Do you recollect whether at this time you saw the account of H. B. Martin covering the period from about the 20th of October to some days after the 3d of November?

—. ——.

Q. How was that account with reference to there being an entry of a debit and credit of $9,000?

A. There was on the 3d of November in opposing colums a credit below another entry, as I recall it, just an entry of $9,000, and then on the debit side an equal entry of $9,000 just entered on that day.

Q. Do you recollect whether you saw at that time the account of G. R. McCullough?

A. I do.

Q. And what did it show?

A. It didn't show any entry of any item of $9,000 during the month of November, 1910.

Q. Did you ever then or at any time thereafter obtain a copy of that account, or what purported to be, of the account of Mr. McCullough?

A. I never did. I never saw any statement of that account any time or place other than what appeared on that sheet or sheets.

Q. Did you receive then or some time subsequent thereto, or about that time a statement or Mr. Martin's account covering the period we have been talking about, Mr. Biddison?

A. I wouldn't be certain just when that was furnished, but there was furnished about that time, either to you or I—it came under my observation an account or a statement of H. B. Martin's account, my recollection is that you had that in your possession when we went to the bank. I might be mistaken about that.

Q. What is your recollection about that having been brought up to the court room by some one from the bank?

A. Yes, it was brought up by some one representing the defendants or the bank, and I think turned into your hands. I don't think I ever had custody of it.

Q. Isn't it a fact you did have it here the other morning when I came up here; it was in your files?

A. That might have been the situation.

Q. Is that the paper you have reference to?

A. This is the paper I have reference to. This statement is the only statement of Mr. Martin's account I ever saw outside of the bank book down there.

Q. Mr. Biddison, I notice on this statement here some figures here in pencil; do you know who made those figures on there?

A. I don't. They are not in my handwriting, and I don't know who made them. They were not in the statement originally, but they were memoranda, as I recall it, made either at or shortly after the time that we went down and examined the record of Mr. Martin's account.

Q. Is this statment showing the debits and credits on Mr. Martin's account from October 20th to November 7th, inclusive, in the precise form that it appeared. In other words, is it a copy of the ledger page that we saw down there, or is it merely a statement of the items contained in that ledger?

A. This is merely a statement, and as I may say a correct statement of the items as they appeared, but it is by no means a copy, nor does it show the manner in which that account was kept there.

Q. And the precise way in which those entries appeared?

A. No, it doesn't show that at all; it *is* doesn't show that method.

By Judge Diggs:

Q. Do you know who made this, Mr. Biddison?

A. That statement?
Q. Yes.
A. No, I didn't see it made.
Q. It was made either by the bank or some one connected with the bank.
A. I assumed by the bank. It was brought up by somebody representing the bank or the defendants, I don't recall now just who."

* * * * * * *

951 In the Supreme Court of the State of Oklahoma.

No. 5773.

THOMAS GILCREASE, Plaintiff in Error,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW, and AL BROWN, Defendants in Error.

Response of Defendants in Error to Petition for Rehearing.

May it Please the Court:

While the petition for rehearing presents and argues no new question for the consideration of the court, but is, substantially, in effect an attempt to present and argue questions that have heretofore been elaborately presented, briefed, and argued to the court, and by the court carefully considered and decided in an opinion which discloses a thorough consideration of the questions involved and a more than ordinarily minute acquaintance with the record, we have deemed it best not to let the petition for rehearing pass unnoticed lest silence might be taken for acquiescence.

The plaintiff in error seems mainly to base his application for rehearing on propositions which may be formulated as follows:

(*a*) Plaintiff contends the court was wrong in construing the Act of May 27, 1908, in reference to the effect to be given to the roll or census card offered in evidence.

(*b*) Plaintiff contends that this court was in error in holding that there was no fraud committed in the transactions set up in the petition filed in the cause.

(*c*) The plaintiff contends that the court was in error in holding that the instrument bearing date of February 8, 1911, was a lease, was based on a consideration, and was not fraudulent.

And, of these, in their order:

A.

Plaintiff contends the court was wrong in construing the Act of May 27, 1908, in reference to the effect to be given to the roll or census card offered in evidence.

The construction of the Act of May 27, 1908, was fully argued in the briefs of the parties to this cause, and before the court on oral argument, and, after considering such briefs and argument and the authorities cited in support thereof, this court reached the conclusion that the correct construction of such act was, when the enrollment record failed to disclose the exact date of birth but did disclose the date of enrollment, Indian citizens should be considered of the age shown by the enrollment record at any time within twelve months prior to the enrollment. In our judgment, this is the correct construction of the Act.

In our original and supplemental briefs on file in this cause, this question was fully discussed by us. To that discussion and the discussion of it by the court in its opinion in this cause, we have nothing new to add and no further argument to advance except to call the court's attention to the fact that the law, as announced in the opinion in this cause, had become the law of this jurisdiction prior to the rendition of the opinion in this case, and was so announced in Heffner v. Harmon, not yet officially reported (159 Pac. 651), and this doctrine announced in McDaniel v. Holland, 230 Fed. 945, which was cited with approval in the opinion in this cause and in the Heffner case has since then been re-examined and reaffirmed by the Circuit Court of Appeals of this circuit in Etchen v. Cheney, 235 Fed. 104.

It, therefore, seems that, when the enrollment records show that an Indian was nine years old on a certain day, without disclosing the date of his birth, it follows that he was nine years of age on that date, and such records are not evidence that he became nine on the day of enrollment, but, instead thereof, established the fact that he became of such age at some time within twelve months prior thereto. This is the established law in this jurisdiction, and we feel that any further argument of the proposition will be a trespass on the time and patience of the court.

B.

Plaintiff contends that this court was in error in holding that there was no fraud committed in the transactions set up in the petition filed in the cause.

The question of fraud in fact and in law presented by the pleadings in this cause was fully argued, both orally and by brief, to the trial court, who heard the witnesses testify and saw their manner of testifying and deportment on the stand. Such questions have also been briefed in the two briefs of plaintiff in error in this cause, and in the two briefs of the defendants in error in this cause, and fully and ably presented to the court on oral argument. The trial court, with the advantage it had of observing the manner and demeanor of the witnesses on the stand, and this court have both decided that there was no evidence tending to support the allegations of fraud. In our original brief and in our supplemental brief, we have gone fully into the question of fraud

and the value of the lease, giving not only a synopsis of the evidence on these questions but practically giving all the substantial evidence contained in the record in full.

Any unbiased mind, fully conversant with the record, must come to the conclusion reached by this court in its opinion in this cause, that there is no evidence supporting the allegations of fraud, but, if we should concede, for the purpose of argument, that the record does contain evidence of fraud, the trial court having found against such issue, this court will not overturn the finding of the trial court on that question unless an examination of the record discloses that the finding of the trial court was against the weight of the evidence. The finding of the trial court, as shown in our original and supplemental briefs, not being against the weight of the evidence, but in accordance with all the evidence in the cause and at least supported by the weight of the evidence, this court cannot disturb such finding without overruling a long line of adjudications in this jurisdiction. This, we do not anticipate the court will do, and we believe a further examination of the entire record in the cause will, if possible, more thoroughly convince the court and strengthen it in its opinion that there is no substantial evidence of fraud in the cause.

It is again contended by the plaintiff in error that the lease of February 8, 1911, should be declared void on account of the relation of attorney and client, which it is insisted existed between Mr. Martin and Mr. Gilcrease at the date of entering into such agreement. No new authority is cited, no new argument is advanced, in support of this contention, and it is based on the same argument and rested on the same authorities as originally cited and advanced to sustain the contention when first made.

In addition to the reasons given and arguments presented in our original briefs in this cause, and the reasoning of the court in its opinion in this cause, we say that, even conceding the correctness of the argument of the plaintiff in error as a general rule, it has no application to this cause. No authority has ever yet held that the relation of attorney and client rendered absolutely void any contract or agreement entered into between persons sustaining such relation. It appears from the record in this case that, after the making of the lease of February 8, 1911, and within a few months of the bringing of this suit, Mr. Gilcrease, who was then in possession of all the information, both as to the law and facts of this case, which he had at the time of bringing this suit, bought back from Martin the interest, or the major part of the interest, acquired by Martin under such lease. The record of this cause in this court shows that, after the trial of the cause, and after the pendency of this appeal in this court, Gilcrease adjusted all of his differences with Mr. Martin, reserving only the right to proceed for the recovery of the leasehold interest against McCullough, Bradshaw and Brown.

It is not contended, it cannot be contended, in the face of the record in this case, that, when, on the 11th day of December, 1911, Gilcrease bought from Mr. Martin three-fourths of Martin's interest

in the lease just sixty-five days before the bringing of this cause, he did not then know every fact he claims to have known on the date the suit was brought.

It is, therefore, evident that whatever of merit there may have been in this contention of plaintiff in error, it has ceased to be a question of interest in this cause. The transfer to McCullough could not be affected by the relationship existing between Martin and Gilcrease, unless it should be found that such interest was knowingly obtained by them by means of the relationship existing between Mr. Martin and Mr. Gilcrease; in other words, obtained by means of the alleged conspiracy and confederacy set out in the petition. This conspiracy and confederacy and fraud, the trial court and this court alike found did not exist. Gilcrease having acquired Martin's interest in the lease, and having released Martin from any real or supposed obligation to account to him by reason of the transaction, has now no ground of complaint on the ground of relationship existing between him and Mr. Martin. Gilcrease having acquired the sole interest that could by any possibility be construed to be subject to the fiduciary relation of attorney and client, there is not, and cannot in the nature of things, be any place now in this cause to apply the rule that dealings between attorneys and clients, in reference to the subject-matter of suits, will be scanned with a jealous eye.

C.

The plaintiff contends that the court was in error in holding that the instrument bearing date of February 8, 1911, was a lease, was based on a consideration, and was not fraudulent.

Considering the lease of February 8, 1911, separate and apart from the other contracts and agreements shown in the record, it is evident that it is not subject to any of the attacks made on the instruments which precede it. On February 8, 1911, Thomas Gilcrease was of age in fact as shown by his admissions on the stand, and was of age within the purview of the Act of May 27, 1908, and, consequently, under any view of the law, had a right to make any contract, conveyance, or disposition of property owned by him that any other person or citizen of Oklahoma would have a right to do, even to the giving of it away, as has been frequently decided by the Supreme Court of this state, the United States Supreme Court, and other courts.

The instrument bearing date of February 8, 1911, is without doubt an oil and gas mining lease, contract, or covenant, as such instruments are variously termed by the courts dealing with them and defining their nature and character. In addition to the authorities presented by us on this question, in our supplemental brief, and the authorities cited by this court, in its opinion, we desire to call the court's attention to the case of Commins v. Guaranty Oil Company, 154 Pac. 882, decided February 5, 1916, and reported after the

filing of our brief. In passing on the question, the Supreme Court of California say:

"Respondent has all along contended that the agreement which we have called a lease did not amount to such, but we think that it should properly be so termed. Any matter of mere form or designation which the parties may give to a document will not change its legal effect."

The third head-note in the case is as follows:

"An agreement between the holder of land under a contract of purchase and a second party, providing that the second party shall take possession of the land and develop oil thereon, rendering to the other a portion of the product in payment of its use, is a lease, irrespective of its form or the designation given it by the parties."

That such instrument constitutes a lease is admitted by the plaintiff in error, and was so admitted at a time when he had no particular interest in otherwise defining the character of the instrument, when he and his attorneys were giving their unbiased opinion as to its nature and character and when from their own viewpoint, it was unnecessary to deny the character of the instrument in order to bolster up a failing cause.

On page 19 of the record, speaking of the execution and character of the instrument, in the petition herein it is claimed the defendants in error had Gilcrease "to execute and deliver to them a certain paper writing, purporting to be an oil and gas mining lease upon the terms herein described, for a royalty of one-eighth of the oil mined and saved from said premises, and purported to vest in Grant R. McCullough a one-half interest, in the plaintiff, Thomas Gilcrease, a one-fourth interest, and the defendant H. B. Martin a one-fourth interest. A copy of said lease or contract is attached hereto, marked Exhibit 'D', and made a part hereof."

On page 20 of the record, in speaking of the instrument of February 8, 1911, its character and effect is further described by the plaintiff in error in his petition as follows: "That by the terms of said contract or lease of February 8, 1911, the defendant, Grant R. McCullough, purported to become the owner of one-half of the equipment on said premises, and the defendant H. B. Martin, of one-fourth interest in said equipment on said premises."

Further on page 20 of the record, the instrument of February 8, 1911 is spoken of in the petition as follows: "That upon the execution of the lease of February 8, 1911, hereinbefore referred to as 'Exhibit D,' the defendants procured the plaintiff to execute his note on the First National Bank of Tulsa, Oklahoma," etc.

The instrument of February 8, 1911, is again described in the petition as a lease on page 30 thereof, as follows: "And the pretended lease of Thomas Gilcrease to H. B. Martin and G. R. McCullough, of February 8, 1911." It is thus seen that, in the judgment of plaintiff and his learned counsel, the instrument bearing date of February 8, 1911, after it had been examined by them, for the purpose of attack and having it set aside, was, in their judgment, a lease and sufficient to vest the leasehold estate, and it was not until after the decisions of the Circuit Court of Appeals of the

Eighth Circuit and the Supreme Court of this state settled the fact that Thomas Gilcrease was an adult on February 8, 1911, and as such would have a perfect right to make an oil and gas mining lease on such day, that it ever entered the minds of these distinguished gentlemen to question the fact of the efficacy of the instrument of February 8, 1911, to convey or vest such interest. Then and only then did it dawn on them to assert or claim that the instrument was insufficient to confer or vest a leasehold interest or estate.

It is apparent that the attorneys of Gilcrease were correct in their first estimate and judgment as to the character of the instrument of February 8, 1911, and its sufficiency to vest a leasehold interest or estate, for the lease or the instrument itself confers the right to mine, produce and sell the oil produced from the land described. It bears all the necessary and usual conditions and stipulations contained in an oil and gas mining lease. This instrument is found on page 310 of the record, and among other things contains the following: "That for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto contract and agree that the said Thomas Gilcrease, G. R. McCullough and H. B. Martin, their respective heirs, administrators and assigns, shall have and hold, in the proportions hereinafter described, the exclusive right to mine oil and gas from and upon the premises hereinafter described, to-wit:" (describing the land) "as long as oil and gas, or either of them, are found upon said premises in paying quantities." Then follow the other stipulations as to the terms on which the land described is to be operated for oil and gas, and the quantum of interest each of the parties is to have in the oil when so produced.

The instrument is properly executed and acknowledged, as instruments affecting the title to land were at that time required to be executed and acknowledged, and placed of record for the purpose of giving notice of the interest of the different parties thereto. The instrument bears all the requisites of a valid agreement. On its face it recites that it is made in consideration of the mutual covenants and agreements thereinafter contained. One of these agreements and covenants was that Thomas Gilcrease should receive "as royalty from said leased premises," "one-eighth of all the oil mined and saved upon said premises delivered in pipe line, and such royalty shall be paid at any time after the sale of such oil upon the demand of said Thomas Gilcrease." This is the usual royalty clause contained in oil and gas mining leases, and it will be noticed that it is described "as royalty from said leased premises." The contract then provides that in addition to said royalty that Gilcrease, his heirs, executors and assigns, shall have and hold an undivided one-fourth interest of "the leasehold interest in said property"; the said G. R. McCullough, his heirs, administrators and assigns, shall have and hold an undivided one-half of "the leasehold interest in said land," and H. B. Martin, his heirs, administrators and assigns, shall have and hold an undivided one-fourth of "the leasehold interest in said land."

The instrument contains the further stipulation, which is unusual in character in that it imposes a specific burden and gives the lessees

no right to get from under the burdens imposed by the lease, such as are usually contained in oil and gas mining leases. This stipulation is as follows: "And it is further contracted, covenanted and agreed that the parties hereto, their heirs, administrators and assigns, shall operate said lease for oil mining purposes from this date, as long as oil and gas is found in paying quantities. * * *"

The instrument also contains a stipulation as follows: "And it is further covenanted, contracted and agreed that the said parties shall not remove any of said equipment, including powers, engines, tanks, lead pipes, houses, tubing, rods, casing or any other portion of said equipment from any wells upon said leased premises, as long as oil is produced from said wells in paying quantities. * * *"

This instrument, which the parties to it have in it denominated a lease, provided for the immediate operation, and that such operation should continue as long as oil and gas were produced in paying quantities. From this obligation of immediate and continuous development, equipment and operation, the lease furnished no means of escape. This stipulation was a plain assumption of a continuing duty, obligation and liability which could not be avoided by anything contained in the lease, and could not be avoided except by a violation of its terms and rendering the parties thereto liable.

All the instruments, leases and conveyances set out in this record were entered into after the passage of the Act of May 27, 1908, and consequently, under the law as declared by the Supreme Court of this state, each of the instruments stands unaffected by the fact that there may have existed a prior contract or agreement for its execution, entered into while Thomas Gilcrease was under restrictions, and does not fall under the ban of the prohibition contained in the Act of April 26, 1906. In addition to this there is no claim in the evidence that any contract agreement or understanding existed between Gilcrease, Martin and McCullough, or any one else for the execution of the instrument of February 8, 1911, prior to that date, the only claim being that it was executed in pursuance of the alleged confederacy between the defendants to unlawfully acquire a lease upon the land. This would not be sufficient even to bring the agreement under the ban of the Act of April 26, 1906, because, in the very nature of things, Gilcrease was not a party to such alleged secret, confederacy and conspiracy, by which it was sought to despoil him.

The Supreme Court of this state has more than once decided that the Act of May 27, 1908, does not render an agreement or conveyance executed after removal of restrictions void by reason of an agreement so to do made during the period of restrictions, and it has also held that because such an instrument was executed after the removal of restrictions, it does not follow it was executed in pursuance of a previous agreement so to do made when under restrictions.

In Oates v. Freeman, 157 Pac. 74, speaking of an instrument executed when the Act of April 26, 1906, was in force, the Supreme Court of this state on rehearing, and after full consideration and elaborate argument, and after the case had been twice presented on petition for rehearing, said:

"The contract or agreement to convey within the inhibition of

this statute, is not to be inferred, as we understand it, from the mere fact of the execution of a deed during the period of restrictions, and placing that deed of record, and the execution of a deed to the same party for the same land, after the restrictions had been removed."

In Henley v. Davis, 156 Pac. 337, not yet officially reported, the court say:

"A Creek freedman citizen, who, subsequent to the taking effect of the Act of Congress of May 27, 1908, while a minor, by a deed void under the provisions of said act, attempted to convey her allotted lands, may, upon arriving at majority, convey said lands to the grantee named in her former deed. Such later conveyance made when she is an adult, if regularly and voluntarily executed, and without fraud or duress, is valid and binding upon her."

Further the court say:

"We are of the opinion that the only restraint upon alienation of the lands involved herein are contained in the Act of Congress of May 27, 1908, which is the revising act, and was intended as a substitute for the provisions of all prior laws on the same subjects embraced therein."

In McKeever v. Carter, 157 Pac. 56, not yet officially reported, the Supreme Court of this state, speaking of the Act of April 26, 1906, and the Act of May 27, 1908, say:

"By the language of this section a deed made after the removal of restrictions, if made in pursuance of an agreement entered into before the removal of such restrictions, is void. The Act of May 27, 1908, contains no such language, as will be seen from the section quoted, supra, but simply enacts that all attempted alienations and contracts to sell entered into before removal of restrictions, are declared void. There is no prohibition against sale, after restrictions are removed."

Thus it will be seen that there is no statutory provision and no rule of statutory construction which renders the instrument of February 8, 1911, void or voidable. It stands, like every other contract, to be judged of by and in accordance with its terms, and the conditions under which it was executed. No rule of law or statute prohibited its execution or rendered it in any manner subject to attack.

The plaintiff in error having failed to establish the existence of the conspiracy or confederacy to cheat and defraud, and the evidence showing no fraud, persuasion, deceit or duress exercised on Thomas Gilcrease to procure the execution of this agreement, it is evident the agreement must stand unless it contains some evidence of self destruction within itself. An examination of the instrument fails to disclose any such element. It is regularly executed and acknowledged, was executed by parties possessing capacity to enter into contracts. It seems, however, to be assailed now on two theories; one that it fails by its terms to confer any interest, and the other that it has no consideration to support it. Neither of such contentions are made in the pleadings. The pleadings describe it as a lease, the parties to it speak of it as a lease, of the passing of the leased premises, and what is to be done with the leased premises. It is not contended in the pleadings that it is without consideration further than it is a part of the entire transaction and must fall because, as it is claimed,

it grew out of the prior illegal transaction, and therefore is devoid of legal consideration. The first contention that it is without power to confer an interest, is too puerile to stand in need of extended argument. It is true it does not contain the words "grant, bargain and sell." These words are never necessary even to convey an interest in real estate or a fee title, if it appears from the instrument it was the intention of the parties to so convey. These words are unnecessary in any oil and gas mining lease. First, because such lease, or rather the instrument usually spoken of as a lease, does not convey an interest in land. So it follows that words of conveyance are unnecessary, and indeed inappropriate in such an instrument. Second, because such instruments are not strictly leases. The instrument does provide that they "shall have and hold * * * the exclusive right to mine oil and gas from and upon the premises hereinafter described." This is all that the instrument usually called an oil and gas mining lease can give and does give—merely the right to mine and dispose of the oil in accordance with the terms of the instrument. This confers the right to enter on the land for the purposes of the instrument with like effect as if the right of entry and the right of possession for such purpose was given in express words. It is sufficient in a deed to the fee of the land that it appears to be the intention of the parties to convey. If this appears a fee title passes even though no apt words of conveyance are used.

In Horton v. Murden, 43 S. E. 786, the Supreme Court of Georgia say:

"There must be proper words used in order to convey title to land or to create a lien thereon. In Georgia, where no particular form is required in a deed or mortgage, it is not necessary to use 'grant,' 'bargain' or other technical words; but any language showing an intent to convey or mortgage is sufficient."

In Pierson v. Armstrong, 63 Am. Dec., at page 449, the Supreme Court of Iowa say:

"Is it not the intent and tone and spirit of all our laws and institutions and tenure of lands, that the latter may be conveyed by any words which manifest that purpose, and for any consideration we please so that others having legal or equitable claims upon us are not injured?"

In Harlowe v. Hudgins, 31 Am. St. Rep. 21, the Supreme Court of Texas say:

"No precise technical words are required to be used in a conveyance of real estate. The use of any words which amount to a present contract of bargain and sale is sufficient. Whatever may be the inaccuracy of expression, or the inaptness of the words used in the instrument, the courts will give effect to it if an intention to pass the title can be discovered therefrom."

Authorities on this proposition might be multiplied practically without limit, but the intention of the parties appears so clearly and unmistakably from the instrument in question that a further discussion of it and citation of authority is unnecessary. Indeed, the words used in this instrument are apt words for its purpose. The words of present conveyances, "grant, sell and convey," would not

be, considering the nature of the paper usually called an oil and gas mining lease, apt words, because under such instrument no interest in the land passes.

The contention that the instrument is without consideration to support it, is altogether without merit. The instrument itself recites that it is made in consideration of the mutual covenants and agreements therein contained. The mutual agreements are that Gilcrease shall have a royalty of one-eighth of the oil produced and saved from the premises. This royalty is to be free, clear and discharged, and is not to be liable to be taken in payment of any of the debts created in the operation of the leased premises. There is a provision without any defeasance, that the leased premises shall be operated for oil and gas as long as they are produced in paying quantities. Each of the parties in interest becomes individually liable for the entire indebtedness created, although provision is made for proportioning the amount between the parties. Yet, to the persons with whom the indebtedness was created, McCullough and Martin would be liable to the entire amount of the indebtedness created, and it could be enforced against them by the creditors. When one reads this instrument, it is impossible to conceive that the same is without consideration. Consideration being present, the question of its adequacy is eliminated in this case for failure to prove duress or fraud, and we are not concerned with that question. The instrument being in writing of and by itself imports a consideration, and puts the burden of proving a want of consideration upon the person attacking it on that ground. At common law no consideration was necessary to support an instrument under seal, or rather, an instrument under seal imported a consideration which precluded an attack. Our statute does not require any instrument to be under seal, but provides that they shall have the same effect as if under seal, and this being so, all written instruments which arise to the dignity of deeds of specialty under common law import a consideration which could not be overcome except for certain provisions of our statute. These provisions are as follows:

Sec. 934, Revised Laws of Oklahoma, 1910, is as follows:

"A written instrument is presumptive evidence of a consideration."

Sec. 935 of the same work is as follows:

"The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it."

So this instrument stands with the presumption of law created by statute that it was executed on a sufficient consideration and that the party attacking it must show to the contrary. There is no evidence showing want of consideration. Notwithstanding the statutory provisions above set out, it is well established law, and has been so established almost from the beginning of the law, that the mutual covenants, stipulations and agreements in a contract or written instrument constitute sufficient consideration to support it, and it is not for the court to put the value on such mutual stipulations, covenants or agreements. The parties themselves must judge of

this. Otherwise, persons would be deprived of the right to contract and deal with their own as they saw fit.

In 9 Cyc. 323, it is said:

"Where mutual promises are made the one furnishes a sufficient consideration to support an action upon the other."

It is a sufficient consideration that the thing to be done constitutes a benefit to one of the parties or a detriment to the other. It need not have a money value. It is sufficient if it requires him to do something he would not otherwise be legally liable to do or perform.

In Ruling Case Laws, Vol. 6, page 656, Sec. 68, it is said:

"The detriment which will constitute a consideration for a promise need not be an actual loss to the promisee. It is sufficient if he does something he is not legally bound to do. To constitute a consideration it is enough that something is furnished, done, forborne or suffered by the party to whom the promise is made as a consideration for the promise to him."

A multitude of authorities sustaining this could be cited. In the absence of the contract of February 8, 1911, it can not be contended that McCullough and Martin were under any legal obligation to develop and operate the land in question for oil and gas mining purposes, to produce oil therefrom, or to furnish money for such purpose. Indeed it is the contention of the plaintiff that no such liability existed. It therefore follows that they did something, entered into a promise to do something which they were not legally liable to do, something they were not legally bound to do. It has been held that a promise to make an offset, which is compellable only in chancery, in consideration of a promise to pay the interest of the debt, is sufficient to support the agreement. (Punderson v. Fanning, 1 Roupe 193.) A promise to contribute to the expense of an enterprise, in consideration of a promise to give a share of the proceeds has been held sufficient consideration to make a binding contract. (Butenstoff v. Michaels, 56 N. Y. 607.) A promise that if defendants would hire of plaintiffs two negroes as boat hands, he would deliver to them his cotton crop to carry to market, has been held to be a sufficient consideration to enforce the agreement to deliver the cotton. (Rice v. Sims, 8 Rich. 416.)

It has also been held that an offer to pay the expenses of a person to take a trip to Europe for his own pleasure and recreation when accepted, was sufficient to constitute a contract and to render the promisor liable for the expenses of such trip.

Even conceding the assignment to Martin and Gilcrease by McCullough to be good, the instrument of February 8, 1911, would still have consideration enough to support it because prior to its execution Martin and McCullough were under no contractual obligation to develop. Neither would be liable for goods bought by the other for the development of the property. Gilcrease, by the purchase of material necessary, or supposed to be necessary to operate or develop the premises, could have placed no personal liability on Martin or on McCullough. Yet under the instrument of February 8, 1911, there was an absolute undertaking to operate. There would be an absolute individual liability on the part of McCullough and

Martin for every dollar's worth of property that was used in the development, equipment or operation of the premises. It is true that Gilcrease would also be personally liable. But this would not relieve Martin and McCullough of their individual liability. It is true the lease provided for the payment of such expenses out of the oil to be produced, less the royalty interest. This did not relieve Martin and McCullough of their individual liability for the entire indebtedness. It only presented a means by which, if the lease proved productive, they could escape personal liability for that portion of the indebtedness belonging to the other by the application of the proceeds of the oil to be produced to the extinguishment of such indebtedness before any division thereof could be had among the parties to the instrument. If the lease did not produce oil, or if it did not produce oil for a sufficient length of time to liquidate such indebtedness, Martin and McCullough would each be individually liable for the whole amount of the indebtedness that might remain unpaid. Under the contract of February 8, 1911, Martin and McCullough would be compelled to contribute to the expense of operation and development of wells so long as the property produced oil in paying quantities, even though, in their judgment, it might be good business policy to cease operations.

In 6 R. C. L., page 676, Sec. 84, it is said:

"The considerations which have been considered so far have been those which are necessary to support unilateral contracts. For the promise of one of the parties in a bilateral contract, no other consideration is necessary than the promise of the other. It is usually said that where there are mutual promises, one is the consideration for the other. * * * It is the promise, and not the performance thereof, that constitutes the consideration, except where by the terms or necessary intendment of the agreement between the parties, performance on one side is made a condition precedent to performance on the other."

In the present case it appears from the pleading and proof that Martin and McCullough have performed the obligations imposed upon them by the agreement of February 8, 1911. It may be said in the light of subsequent events that the consideration furnished by Martin and McCullough, in view of subsequent returns, was inadequate and insufficient to support the agreement of February 8, 1911. There however can be nothing in this contention. It is admitted that this agreement has proved more valuable to Martin and McCullough then either of them dreamed of at the time of its execution. It likewise proved more profitable to Gilcrease than he dreamed of at the time of the execution of the lead of February 8, 1911. The contract must be judged as of the conditions that presented at the time of its execution. The conditions then presented were, that the land had been formerly leased under a departmental lease; that it had been operated in such manner by the former lessee as to make the question of its value problematical. The production had greatly fallen off. The lessee in possession had said he would extract all the oil from under it, and the manner of his operation was such as to induce skilled oil men to believe that he would do so, and that the lease

would be practically without value, or might be so on the termination of the lease. Under the terms of his lease, the former lessee had the right to remove all improvements from the land and strip the wells of everything except the casing. There were from forty to fifty wells on the lease, some of which had gone dry, others producing so little as to make the question of whether they were producing oil wells one of doubt and the occasion of litigation. It would take from fifty to seventy thousand dollars to equip this lease and put it in condition to produce oil. If it was left idle for any length of time the wells would fill with water and the value of the lease, if not entirely destroyed, greatly impaired, and if left for any time its value would be entirely destroyed. This effect on wells standing open without operation is so well known as to be a matter of general history of which the court will take judicial knowledge. It was uncertain if after the lease was equipped and put in condition to produce oil whether it would do so in such quantities as to ever repay for the outlay. Gilcrease was unknown to the business world, and without credit. The question with him was to be able to put the lease in such condition as it would not be rendered valueless. Under these facts and conditions the reasonableness of the contract of February 8, 1911, must be judged, and as so judged we say it is not unreasonable, and we say that it required an expenditure of from fifty to seventy thousand dollars, and in fact did take sixty-eight thousand dollars to equip it, under conditions which skilled oil men had refused to purchase the entire working interest at $10,000.00, where the former lessee who was in possession and operating the lease was only willing to pay $3,000.00 for a new lease. To say that because this venture has proved successful beyond the dreams of the parties thereto, we will now look back after the element of chance has been removed and say the contract is unreasonable, is to levy tribute on success and to penalize industry. Of course no man purchases a lease, expends a large sum of money in its development, without the expectation, without the hope, that the venture will prove paying, and pay sufficiently to compensate for the great risk taken. Martin, McCullough nor Gilcrease would never have become liable or agree to become liable to expend fifty thousand or more dollars necessary to equip this lease without the expectation that the lease would produce enough oil, not only to reimburse them for the expense incurred, but give them a rich margin beyond. Yet the only argument advanced against the consideration of the lease of February 8, 1911, is that it provides for the payment of improvements out of the oil. This provision was of course put in to prevent McCullough and Martin from being personally liable for the entire indebtedness if the venture proved unprofitable, if the lease only produced oil in sufficient quantities to pay for the equipment, or a part thereof. It was put there so those who were financially responsible, especially McCullough, could apply the oil to the discharge of this indebtedness before a division was had. This was agreed to by Gilcrease because he knew if this lease did not prove valuable he was without means and could not pay his proportionate part of the expense. If the lease had only produced $20,000.00

worth of oil and then quit, McCullough, Martin and Gilcrease would have been liable for the $48,000.00 expended in excess thereof. Gilcrease not being able to respond for his proportion of $48,000.00, McCullough and Martin would have had to make the deficit good. If the lease produced only $20,000.00 worth of oil, and the proceeds of it had been divided among the parties thereto before the payment of the indebtedness on the failure to produce more, Martin and McCullough would have been left to foot the entire $68,000.00 of indebtedness. But it is unnecessary to enter into this discussion. The agreement to become liable, the agreement to work the lease to exhaustion, formed sufficient consideration for its execution. Courts do not ordinarily go into the question of equality or inequality of consideration, especially where the consideration is not the payment of sums of money, but act upon the presumption that parties capable of contracting are capable of regulating the terms of the contract, granting relief only when inequality is shown to have arisen from mistake, misrepresentation or fraud. A different rule would in every case impose upon the court the necessity of inquiring into and determining the value of the property acquired by the party giving the promise. In all cases, therefore, where the consideration of the assumption or undertaking is founded upon the sale or exchange of merchandise or property, or upon other than a money consideration, and the promise has been deliberately made, the law looks no further than to say that the obligation rests upon a consideration, that it is one recognized as legal and of some value. It is sufficient if it is only of slight value or such that can be of value to the promisor. Where a party contracts for the performance even of an act which will afford him pleasure, gratify his ambition, please his fancy, or express his appreciation of a service another has done him, there is no measure by which the estimate he places thereon can be corrected. There is in such a case no rule by which the courts can be guided if once they depart from the value fixed by the promisor. If, in the classes of cases resting on mutual promises, there is any legal consideration for a promise, it must be sufficient for the one made, and if this is not so the court of necessity substitutes its own judgment for that of the promisor, and in doing this makes a new contract or defeats a contract executed between competent persons, and under which rights, duties and obligations have arisen. This, as we understand it, is the rule established by the authorities in this state. Gilcrease, on February 8, 1911, was of age. He has been shown by the evidence to possess, and was found by the trial court to possess, more than ordinary business judgment, acumen and foresight. He had full legal capacity to do with his land as he saw fit, to give it away entirely if he so pleased, and as no fraud has been established in this case, even for the sake of the argument conceding that the consideration was inadequate, the agreement can not be set aside on that ground.

In Hope v. Foley, 157 Pac. 727, in speaking of Indian deeds, it is said:

"From this fact we take it that proof of the payment of a present consideration is not essential to the validity of such conveyance, but

the approval of the approving agency provided in the act renders the conveyance valid, although no consideration was paid or recited in the conveyance. The title to the inherited land was in the heir, and the heir had the right to convey upon approval of the approving agency. We take it that, if he gave the land away, and the proper agency approved the conveyance, the title would pass to the grantee, and the heir could not thereafter repudiate the conveyance."

In Bruner v. Cobb, 131 Pac. 165, the court (Okla.) say:

"Whenever it appears that the parties to a trade have knowingly and deliberately fixed upon any price, however great or however small, there is no occasion nor reason for interference by courts, for owners had a right to sell property for what they pleased."

In Chandler v. Rowe, 148 Pac. 1026, the court (Okla.) say:

"In the absence of other evidence of mistake or fraud, inadequacy of consideration is not of itself, ordinarily sufficient ground to justify a court to cancel a deed."

In Lewis v. Allen, 142 Pac. 384, the court (Okla.) say:

"Inadequacy of consideration alone is not sufficient to justify a court of equity in setting aside a deed regularly executed."

Further along in its opinion the court say:

"We do not know what weight or influence the moral obligation had as an inducing cause in prompting Mrs. Lewis to enter into the contract for a deed, and in performing this contract, but after the delivery of the deed it then became a legal and binding conveyance and the court below was right in so holding."

The court then goes on and holds that the deed was valid even though made in pursuance of a contract entered into while the grantor was under restrictions, and after citing Maharry v. Eatman, 26 Okla. 46, 116 Pac. 935, say:

"We therefore conclude that section 16 of the supplemental agreement was no longer applicable to the class of allottees to which Mrs. Lewis belonged, and that all restrictions against the alienation of the land were removed by the Act of May 27, 1908. She had a perfect right to alienate her allotment on September 26, 1910, as she did in making the conveyance of that date to the defendant in error, Charles R. Allen, and on such terms as she pleased, so long as she was fairly dealt with, as she seems to have been in this instance. The trial court having found that this deed was secured without fraud and for an adequate consideration and decreeing the title to the allotment in the defendant in error, Allen, these findings of conclusion being supported by the evidence, are conclusive on this court."

In Henley v. Davis, 156 Pac. 333, the question of the validity of an Indian deed made for the same land for which a prior deed had been made, during restrictions, and the sufficiency of its consideration, was before the court (Okla.), and passing on that question the court say:

"It is further contended that the consideration recited in the deed 'one dollar and other valuable considerations,' is insufficient to support the conveyance of June 10, 1910. The question of fraud on the part of the defendants does not enter into this case. The de-

fendants are in possession under the deed. The rule is well established that a voluntary conveyance of property completely executed, in the absence of fraud or duress, is valid as between the parties."

In another place the court say:

"The only restriction upon the alienation of allotted land of the plaintiff herein imposed or continued in force by the Act of May 27, 1908, was that it rendered her personally powerless to contract with relation thereto while a minor as defined by that act. After she became eighteen years of age as shown by the enrollment records of the Commissioner to the Five Civilized Tribes, that restriction was ipso facto removed, and that act having spent its force so far as her allotment and its future disposition was concerned, became inoperative. The deed of June 2, 1910, is apparently a separate and independent conveyance, voluntarily made by the plaintiff, the execution of which was perhaps prompted by a sense of her moral obligation to the defendant. The land was then hers, free from all restraint upon alienation, and she could part with it to whomsoever she chose, upon any lawful consideration she saw fit to accept, or without consideration."

In McKeever v. Carter, 157 Pac. 56, the Supreme Court of this state say:

"Inadequacy of consideration alone is not sufficient to justify a court of equity in setting aside a deed regularly executed."

And the court after reviewing all the then existing decisions of this state on the question of Indians conveying land after they became of age, to the same persons to whom they had been conveyed while under restriction, say:

"In the light of these authorities it would seem that, even though the agreement to convey the land entered into by plaintiff with defendant while plaintiff was a minor was void, and that same could not be enforced had plaintiff declined to perform the same, yet there was no legal impediment in the way of plaintiff conveying his lands to any grantee he chose after reaching his majority, and upon any lgal consideration which he saw fit to accept."

Further the court say:

"There is not the slightest evidence in the record tending to impeach the deeds of August 9th and August 31st, other than the fact that an agreement had been made by plaintiff while a minor to convey his lands to defendant. There is no evidence of coercion, undue influence, or other grounds of equitable interference that would impeach either of said two last-named conveyances, and, if plaintiff was on the date of their execution an adult, he was capable in law of conveying said lands to whomsoever he chose, for any lawful consideration, and could, if he saw fit, give said lands away; and, when he executed and delivered these deeds, and accepted the consideration, said deeds were valid and binding conveyances, and operated to transfer plaintiff's title to the grantee therein named, provided he had then reached his majority."

Further along the court say:

"While some of the evidence tends to show the land was worth more than was paid for it, the fact that the consideration paid was

inadequate is not of itself sufficient to render the conveyance void."

In Hartman v. Butterfield Lumber Company, 199 U. S. 235, 55 L. ed. 217, there was before the Supreme Court of the United States the question of the validity of a deed executed by a party in pursuance of a void contract, which was prohibited by statute, the deed being made after the prohibition of statute had been removed. In passing on this question the court say:

"For the purposes of this case it may be conceded that the contract made before the patent was, by virtue of the policy of the United States as disclosed in its statutes, void, and could not have been enforced by the Norwood & Butterfield Company, but the contract was not inherently vicious and immoral. It was simply void because in conflict with the federal statutes. * * * When the patent issued, the full legal title passed to the patentee. He could do with the land that which he saw fit, sell or give it away, and if he voluntarily conveyed it he could not thereafter repudiate the conveyance."

In Pierson v. Armstrong, cited supra, the Iowa court say:

"Saving the rights of creditors and subsequent bona fide purchasers, we enjoy the right to do with it what we please, not merely to sell it, but to give it away. If a deed is without any consideration what matters it between the grantor and grantee and their heirs? Has not the grantee the same right to give away his lot that he has to give away his horse or his watch? Is not the intent and tone and spirit of all our laws and institutions and tenure of lands, that the latter may be conveyed by any words which manifest that purpose, and for any consideration we please, so that others having legal or equitable claims upon us are not injured?"

The Oklahoma authorities above cited establish beyond cavil, make plain beyond question, that on February 8, 1911, Gilcrease, then being of age, in the absence of fraud, could deal with his property, or any rights pertaining thereto, in such manner as he saw fit, could convey it or any interest therein for any consideration he saw fit, or without any consideration whatsoever. This doctrine is that existing in all the states.

When we take into view the facts surrounding the land which was the subject of the agreement of February 8, 1911, the threats that had been made concerning the operation, the decrease in the production, the falling off of the production of wells, the going dry of some of the wells, the large amount of money required to develop and operate the lease, the necessity for instant action, it can not be said with any degree of truth that the consideration for Gilcrease entering into the lease was inadequate. It is, we submit, merely subsequent events, it is that the lease proved productive beyond the dream of any party to the contract, that looking into subsequent facts, that it is contended the consideration was inadequate. Judging by such a test, many contracts could be set aside. There being no fraud in the execution of the instrument of February 8, 1911, it must be upheld against this assault, because, as a matter of both law and morals it is immaterial whether the consideration for its execution was adequate or inadequate, whether it was less or more

than it should have been, whether, in fact it was without any consideration, for it was executed. McCullough and Martin went into possession under it. They have expended large amounts. Under and by virtue of its terms they have become liable for other large amounts if it should be set aside. Even a voluntary conveyance as has been shown by the foregoing authorities, a conveyance without any consideration whatever to support it, will be upheld when it has been executed. The evidence in this case show that Martin and McCullough went into possession, did develop, th one of them is now in possession and has developed, and further that they have sold interests or portions of interests held by them in the land, on the assumption of the validity of the contract of February 8, 1911. Under these conditions, in the absence of fraud, even though voluntarily, no court will set such an agreement aside, especially would no court do so which has, in emphatic language, time and time again declared as this court has, that Gilcrease had the right to give the entire interest in the land away without any consideration whatsoever.

All of which is respectfully submitted.

JAMES B. DIGGS,
Attorney for Defendants in Error.

RUSH GREENSLADE,
C. C. HERNDON,
Of Counsel.

952 Thereafter, at the January, 1917, Term of said Supreme Court, on the 9th day of January, 1917, the following proceeding was had in said cause, to wit:

#5773.

THOMAS GILCREASE

vs.

THOMAS GILCREASE

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause, be, and the same is hereby denied.

953 *Certificate.*

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing pages numbered from A to E and from 1 to 952, (both inclusive) are a full, true and complete transcript of the record and all proceedings in this court in cause number 5773, Thomas Gilcrease, Plaintiff in error,

versus G. R. McCullough et al., Defendants in error, as the same remain on file and of record in my office.

In Witness whereof, I hereto set my hand, and affix the seal of said Supreme Court, at Oklahoma City, Oklahoma, this 20 day of March, 1917.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma,
By N. C. ORR, *Ass't.*

954 October Term, 1916.

April 5th, 1917.

No. 1056.

THOMAS GILCREASE, Petitioner,

vs.

G. R. MCCULLOUGH et al.

To the Clerk of the Supreme Court of the United States.

SIR: I desire to have printed from the certified transcript of record in the Supreme Court of the State of Oklahoma, only the following pages:

Pages A & B.
Pages 1 to 51, inc.
Pages 87 to 154, inc.
Pages 157 to 202, inc.
Pages 219 to 230, inc.
Page 232.
Page 269, beginning "By the Court," to page 285, inc.
Pages 294 to 324, inc.
On page 362, questions & answers No. 1 and 2.
On page 363, beginning with "cross examination" to question No. 4.
All of page 423.
Pages 550 to 553, inc.
Pages 925 to 949, inc.
The petition for rehearing, exclusive of the title page, and response to petition for rehearing, page 952.

In addition to the foregoing, insert the following stipulations as a part of the current record:

"It is agreed Thomas Gilcrease purchased from H. B. Martin three-fourths (¾) of Martin's one-fourth (¼) interest in the lease at a time when Gilcrease was of age in fact, and was of age under any construction of the enrol-ment records, and signed division

orders by which pipe lines ran oil from the land, paying to Gilcrease nine-sixteenths (9/16) of the proceeds thereof, and to the other defendants seven-sixteenths (7/16) of the proceeds of the oil produced."

A. J. BIDDISON,
Attorney for Petitioner.

I consent that the foregoing be printed as the record in the above entitled case on certiorari.

FREDK. DE C. FAUST,
CHARLES F. WILSON,
JAMES B. DIGGS,
Attorney- for Respondent.

Filed in Supreme Court of Oklahoma, May 31, 1917. William M. Franklin, Clerk.

In the Supreme Court of the United States. October Term, 1916.

No. 1056.

THOMAS GILCREASE, Petitioner,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW and AL BROWN, Respondents.

Stipulation.

It is hereby stipulated and agreed that the Clerk of the Supreme Court of the State of Oklahoma, shall certify to the United States Supreme Court as the record in the above entitled cause, the printed transcript of the record, printed in said Supreme Court of the United States, October Term 1916, and numbered 1056, Thomas Gilcrease versus G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown, and the following as additional evidence contained in the record in this court, and that the said printed transcript of record and the foregoing additional evidence, together with stipulations therein are constituted the record so to be certified by the Supreme Court of the State of Oklahoma, upon and for consideration of this cause in the United States Supreme Court.

A. J. BIDDISON,
Attorney for Petitioner.
JAMES B. DIGGS,
Attorney for Respondents.

On pages 327 and 328 of the record, Mr. Gilcrease testified as follows:

"Q. This lease contract that was made to McCullough bears date of the 24th day of August, 1909. About how long before that, if you recollect, was it that you began to have dealings with any of the defendants in regard to that matter?
A. In regard to this suit?
Q. In regard to that lease or contract?
A. I don't think it was but a few days.
Q. A few days?
A. Yes.
Q. With which of the defendants in the case did you have your first dealings or negotiations?
A. With Mr. Bradshaw.
Q. Is that A. E. Bradshaw?
A. A. E. Bradshaw.

Q. Did you know Mr. Bradshaw at that time?
A. Yes, sir.

* * * * * * *

Q. Did you know Mr. McCullough at that time, along in August 1909?
A. Yes, sir."

On page 383 of the record Mr. Gilcrease testified as follows:

"Q. You didn't consult anybody about whether it was a good price for it before you accepted Mr. Bradshaw's proposition?
A. No, Mr. Bradshaw asked me whether I was not willing to take what he had given for it and I told him yes."

On pages 391 and 392 of the record Mr. Gilcrease testified as follows:

"Q. Well when was it and where that you told the defendant, H. B. Martin, that you had agreed to sell this lease to Mr. Bradshaw for a bonus of $17,000.00?
A. It was in your office, but I wouldn't be sure as to what date it was, and you told me that it was an awful good trade; that was more than you had been, that anybody had offered you for this lease.
Q. That was more than anybody has ever offered for it I knew of?
A. Yes, sir.
Q. That was more than Milliken had offered for it, that being the offer Milliken made to you and that you had told me about, is that right?
A. Yes, sir.
Q. Did you ask the defendant, H. B. Martin, whether he thought that was a good price for this lease.
A. Yes, sir.
Q. You knew, didn't you, that the defendant H. B. Martin, had never seen this lease?
A. I didn't never know of you seeing it.
Q. You knew that the defendant, Martin, had no experience in the oil business and had no interest in the oil business at that time?
A. I didn't know of any interest that you had.
Q. You had never known of the defendant, H. B. Martin, being concerned in a lease had you up to that time?
A. No. I believe not.
Q. Well, did you ask anybody else whether they thought it was a reasonable bonus?
A. No, sir.
Q. When was it with reference to the time that you came back from Keifer that you spoke to the defendant Martin on that subject?
A. I don't know just when it was.

Q. You had already accepted Bradshaw's offer at that time had you not?

A. He just sayd you are willing to take what you got then aren't you, and I said yes.

Q. You understood that you had sold it?

A. Yes, sir."

On Page 418 of the record, Mr. Gilcrease testified as follows:

"Q. Just before you brought this suit I believe you say you drew down some money, that you don't remember the amount, from the Texas Company. Did you borrow any money from the First National Bank of which Mr. McCullough is the president, and Mr. Bradshaw is the cashier, immediately before you brought this suit?

A. Yes, sir; just before I brought this suit.

Q. You borrowed that for the purpose of bringing the suit with, didn't you?

A. No, sir.

Q. How much did you borrow?

A. $5,000.00."

On pages 371 and 372 of the record, Mr. Gilcrease testifed as follows:

"Q. Did you consult Judge Hainer in reference to your business matters?

A. I told him what I had there. I told him that I would like to have them attended to if there was anything to be done to them.

Q. Your purpose then was to find out, was it not, whether the titles of the lands upon which you held mortgages were good?

A. There was a lot of interest and things that way that had to be looked after, and I left it there with Judge Hainer to look it up and see if the insurance had been paid.

Q. That is, you, as mortgagee, held the insurance policies on the property upon which you held the mortgages?

A. Yes, sir.

Q. And you wanted to see whether the mortgagor kept the insurance—kept up the insurance and paid the interest—? Did you leave some abstracts there to be examined at that time?

A. Yes, sir."

On page 375 of the record, Mr. Gilcrease testified as follows:

"Q. Now then Mr. Gilcrease, did you and Judge Hainer take up the matter with Mr. Millikin of paying the royalties in which you claimed he had defaulted?

A. Judge Hainer went with me once over to Mr. Millikin, the only time Mr. Hainer and I went over there to see him about these royalties, and so he said he had paid these royalties at that time.

Q. He told you he was not selling any oil did he?

A. Yes, that is what he said. He said he had paid royalty on all oil he had sold and hadn't sold any.

Q. Had you gone to see Mr. Millikin yourself before that time you inquired to see whether he was not paying you any royalties into the Indian Agent's office?
A. Yes, sir."

On pages 386 and 387 of the record Mr. Gilcrease testified as follows:

"Q. Isn't it a fact Mr. Millikin offered you these terms: $3,500.00 for an extension of the lease as long as oil and gas could be found in paying quantities or $10,000.00 for the fee, the entire title?
A. That is what he told me the time Mr. Hainer went up to his office——
Q. That is what he told you then?
A. Yes, sir.
Q. That was in July, 1909, was it not, when you and Mr. Hainer went to Mr. Millikin's office.
A. I think it was; yes, sir.
Q. Did he tell you then $3,500.00 was what this lease was worth?
A. Yes, that is what he told Judge Hainer and myself. * * *
Q. Did he make you an offer of $10,000.00 for a deed to the royalty and all?
A. Yes, sir."

On page 363 of the record Mr. Gilcrease testified as follows:

"Q. Tom, you are married?
A. Yes, sir.
Q. When were you married?
A. August 19; I believe I was married in August, 1908.
Q. How old are you now according to your computation?
A. I was twenty-three years old on the 8th day of last February.
Q. Have you a family—wife and children?
A. Yes, sir.
Q. You are the president of an oil company?
A. Yes, sir.
Q. You own stock in several oil companies?
A. Yes, sir.
Q. You are extensively interested in the oil business?
A. Yes, sir."

On pages 364 and 365 of the record Mr. Gilcrease testified as follows:

"Q. Did you at any time prior to your coming to Tulsa take any proceedings in court in connection with your father and guardian for the purpose of having him discharged as your guardian?
A. I believe he resigned as guardian, but I forget just when it was, though.
Q. Did you take any proceedings for the purpose of removing your disabilities as a minor and giving you your rights of majority?
A. Yes, sir.

Q. When and where?
A. It seems as though to me it was in September or October, 1908.
Q. That was before you ever came to Tulsa to live?
A. Yes, sir; that was just about two months before I came to Tulsa.
Q. That was sometime after you were married, a month or two?
A. Yes, sir, about a month or so after I was married.
Q. Where was the proceeding taken, in what court?
A. I don't know.
Q. You were there weren't you?
A. It was at Wagoner, yes, sir, it was at Wagoner.
Q. At that time you had a proceeding, a decree entered, there was one entered in the District Court at Wagoner finding you competent to transact your own business and conferring upon you the right to do so * * * ?
A. I think so, yes, sir."

"Q. *You was* that was in September or October of 1908, is that right?
A. It is my best recollection *ot* was about that time.
Q. At any rate it was before you ever came to Tulsa to live?
A. Yes, sir.
Q. Before you called upon Judge Hainer at the office of Hainer & Martin, and before you ever met the defendant, H. B. Martin?
A. Yes, sir.
Q. I observe Mr. Gilcrease in your reply on file in this case, which by the way is sworn to by you, this statement: 'but states and shows to the court that the alleged and pretended order made by the said District Court of Wagoner County, was wholly without any jurisdiction in the premises, and that the alleged petition filed in said court was filed by the defendant H. B. Martin, and that plaintiff acted under the domination, control and influence of the said H. B. Martin, and that all this plaintiff did in and about the said matter was done upon the advice and direction of said H. B. Martin, both as to the legal aspects of the matter and as to the same being to the interest and advantage of this defendant,' and some other allegations of similar character. That is not true in point of fact, is it, Mr. Gilcrease, this reference to these rights of majority proceedings you had taken at Wagoner to confer upon you the right of majority?
A. I had never seen you at that time.
Q. You had never met H. B. Martin?
A. No, sir.
Q. And this statement in your reply is entirely untrue in that regard?
A. Yes, sir, I had never met you.
Q. Did you know Mr. Gilcrease at the time you swore to this reply what it contained?
A. I think I knew.
Q. Had you read it?
A. Yes, sir, I had read it."

On page 433 of the record Mr. Gilcrease testified as follows:

"Q. How much of the stock of the Rogan Oil Company were you to receive according to the terms of your settlement with the defendant Martin at the time you made this settlement?
A. Twelve and a half.
Q. Twelve and a half shares?
A. Yes, sir.
Q. The stock at the time stood in the name of the defendant Martin did it?
A. Yes sir.
Q. When did you receive a certificate representing the twelve and a half shares that you took over from Martin at that time?
A. On the 12th day of February, I believe 1911—or 12. 1912.
Q. The day before you brought this suit was it?
A. A couple of days.
Q. Two days before?
A. Yes, sir.
Q. You still hold that stock do you?
A. Yes, sir.
Q. Have you used it to borrow money with as collateral?
A. Yes, sir."

Order appointing Bradshaw guardian, is on pages 478 and 479 of record, and is as follows:

"STATE OF OKLAHOMA,
County of Tulsa, ss:

In the County Court of said County and State.

In the Matter of the Guardianship of the ESTATE OF THOMAS GILCREASE, a Minor.

Order Appointing Guardian.

"Now on this 12th day of April, 1910, the above cause comes on regularly to be heard by the court on the petition of A. E. Bradshaw, praying to be appointed as special guardian of the estate of Thomas Gilcrease, a minor. And it appearing to the court that notice of the appointment of said guardian was waived in writing by the relatives and next of kin of said Thomas Gilcrease and all persons interested therein: And it further appearing to the court that the said Thomas Gilcrease is a resident of the City of Tulsa, Tulsa County, State of Oklahoma, and that he is a minor over twenty years of age; And it further appearing to the court that it is necessary that a special guardian be appointed for the purpose of receiving the royalties due the said Thomas Gilcrease from the United States Indian Superintendent at Muskogee, Oklahoma, which royalties approximately amount to $18,000.00; And it further appearing to the court that the said Thomas Gilcrease has nominated

and requested the appointment of A. E. Bradshaw of Tulsa, Oklahoma, as such special guardian; And it further appearing to the court that the said A. E. Bradshaw is a fit and suitable person to be appointed as such guardian; It is hereby ordered, adjudged and decreed that the said A. E. Bradshaw be and he is hereby appointed as special guardian of the estate of Thomas Gilcrease and for the purpose of receiving royalties and moneys due him from the United States Indian Superintendent as aforesaid. It is further ordered, adjudged and decreed that the letters of guardianship of the estate of the said Thomas Gilcrease be issued to the said A. E. Bradshaw upon his giving bond in the sum of $20,000.00 to be approved by the court.

N. J. GUBSER,
County Judge."

On pages 367 and 368 of the record, Mr. Gilcrease testified as follows:

"Q. Do you remember the date of the original deed without consulting the papers that you executed to your mother conveying this land upon the advice of Mr. Butte, who was one of your lawyers at Muskogee?

A. I think it was September 9, 1908.

* * * * * * *

Q. At that time I understand you to say that you were advised by Mr. Butte that this deed should be executed for the purpose of testing the question of whether a married minor could convey his real estate?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. You had consulted Mr. Butte on that at the time, had you? You had talked with him about that?

A. Yes, sir.

* * * * * * *

Q. It was intended either you or your mother should take some proceeding in court under the direction of your counsel, Mr. Butte and his firm, for the purpose of testing whether or not you could make a valid deed; was that your understanding of it?

A. Yes, sir."

On pages 405 and 406 of the record, Mr. Gilcrease testified as follows:

"Q. Had you consulted any of your friends or had any persons come to you suggested that you had better try to cancel McCullough's lease and sell it to someone else, or do something else with it?

A. I don't think anyone told me at that time. Mr. Dawson, he talked to me at one time, bit I don't know when that was.

Q. When did Mr. Dawson talk to you?

A. Well, I don't know. Once I was going down home from here, down to my father's. He was on the train and so he came and told me. He talked to me that time and told me, sayd, asked me if he could get that lease back for me, he said it was worth a whole lot. I told him I didn't know anything about what it was worth. He said if he could get it back, he wanted to know, from Mr. McCullough and Mr. Bradshaw, he wanted to know if I would sell it to him for a whole lot more money than I had got. I don't remember just when that was.

Q. Did you tell Mr. Dawson in that conversation, or did Mr. Dawson tell you that the Supreme Court of this state had decided that a married minor could not make a valid deed to his land, that as an allottee, and Indian allottee?

A. I don't know what all he did tell me. He talked to me quite a while.

Q. Did you tell him that you were acquainted with that decision, that you had already read it and had your attention called to it, or in substance what I am now stating, and that you did not want to bring any law suit in regard to it; that you were satisfied with the agreement you had made with Mr. McCullough?

A. I told him at that time that I didn't, that I didn't want to bring any law suit against McCullough and Mr. Bradshaw.

Q. That was immediately before your birthday, in February, 1911, that you had that conversation was it not, Mr. Gilcrease?

A. Well, I couldn't say.

* * * * * * *

Q. That was on the train between here and Muskogee?

A. Yes.

Q. And you deny you told Mr. Dawson you didn't want to bring any law suit, even though you might be able to avoid your contract?

A. I told Mr. Dawson I didn't want to bring any law suit.

Q. Mr. Gilcrease, after the decision of the Supreme Court of Oklahoma on that question of a married minor's title was handed down in 1910, did you read that decision in the office of H. B. Martin?

A. Some one of you asked me that before. I don't remember whether I read that.

Q. You don't remember?

A. No.

Q. Do you remember whether the defendant, Martin, told you about that decision and told you what it decided, and got a copy of it, a typewritten copy, for you to read?

A. No, I believe not.

Q. You don't say that is not a fact do you?

A. No, I wouldn't say. I do not remember anything about whether I read it or not."

On page 407 of the record Mr. Gilcrease testified as follows:

"Q. You referred yesterday to a conversation with Mr. Butte, at Muskogee, on the subject of testing the question whether you, as a

married minor, could deed your allotment. Do you remember that conversation?

A. Yes, sir.

Q. And I think you said Mr. Butte advised you that there was a question, advised you that that was a question that was not yet determined, that he intended to test it in this transaction?

A. Yes, that is what he had me give my mother this deed for.

Q. Now from that time on, with reference to handling your lease, your land, the allotment in question here, did you handle it yourself, or did you go on the theory that you were not in a position to handle it yourself, and that it would have to be handled by your guardian? Which course did you adopt?

A. Well, there never was anything done about it till I gave Mc. McCullough a lease.

Q. Well, you brought suit didn't you, in your own name, for the recovery of past due royalties and for the cancellation of this lease?

A. Yes, sir.

Q. Your guardian, I believe, had resigned or been discharged before that time, had he?

A. Yes, sir.

Q. Your personal estate had all been turned over to you individually?

A. Yes, sir.

Q. You handled it all?

A. Yes, sir."

On pages 413 and 414 of the record, Mr. Gilcrease testified as follows:

Q. When you were making up the accounts for the purpose of making a settlement with the defendant, Martin, did you take his books and make them up from his books?

A. Yes, sir.

Q. Did he have anything to do with it or did you do it alone?

A. No, sir, I done it alone.

Q. The figures that you reached you stated to defendant Martin what they were, and he being busy simply took your word for it and made the settlement on that basis?

A. Yes, sir that is the way we settled.

Q. You had access, after the time that you had a desk in the offices of Hainer & Martin, to all the books and papers in the office did you?

A. Yes, sir, at all times before.

Q. I beg your pardon?

A. I had had for a good long time.

Q. Whenever you wanted to know anything you went and found it out yourself, you would go to the stenographers that looked after the books?

A. If there was anything there I had anything to do with I could always find it out whether you were there or not.

* * * * * * *

Q. You had also access to the safe in the office, did you?
A. Yes, sir.

On pages 383 and 384 of the record, Mr. Gilcrease, testifies as follows:

Q. You didn't consult anybody about whether it was a good price for it before you accepted Mr. Bradshaw's proposition?
A. No. Mr. Bradshaw asked me whether I was not willing to take what he (Milliken) had given for it and I told him yes.
Q. You had read the petition in the case against Milliken in which you alleged that Milliken had taken, in the last three or four years, off this lease something like a million dollars hadn't you, Mr. Gilcrease, a million barrels of oil; I should have said instead of a million dollars?
A. I probably read it, but I didn't remember anything about that portion.
Q. Mr. Gilcrease, you knew that according to the investigation, that had been made by the inspectors from the Indian agent's office to you and Judge Hainer, and by every other source of information you had been able to reach, you knew Mr. Milliken, at that time, owed you some thirty or forty thousand dollars or more for royalties didn't you?
A. The only *was* I knew was just from the reports these people made to you.
Q. And what I told you?
A. Yes, Sir.
Q. H. B. Martin had told you that according to the best information that he had been able to obtain that Milliken had failed, by many thousand dollars, to pay to you your proper royalties accruing from the oil he had taken from that lease? Is that a fact?
A. Yes sir.

[Endorsed:] October Term 1916. No. 1056. In the Supreme Court of United States. Thomas Gilcrease, Petitioner, Plaintiff, vs. G. R. McCullough et al., Defendants. Stipulation. Biddison & Campbell, Tulsa, Oklahoma, Attorneys for petitioner.

In the Supreme Court of the State of Oklahoma.

No. 5773.

THOMAS GILCREASE, Plaintiff in Error,

vs.

G. R. MCCULLOUGH, H. B. MARTIN, A. E. BRADSHAW and AL BROWN, Defendants in Error.

In obedience to the Writ of Certiorari issued by the Supreme Court of the United States on the 26 day of April, 1917, the printed tran-

script of the record in this cause, as printed under the direction of the Clerk of the United States Supreme Court, in the matter of the consideration of the petition for said Writ of Certiorari, together with the stipulation of the respective parties by their respective counsel, filed in this court on the 31 day of May, 1917, and accompanying the said Writ, is hereby certified to the said Supreme Court of the United States as the record of this court and the same are hereto attached.

The said record being true and complete so far as desired by the parties to said action as shown by their *ums* stipulation, transmitted herewith.

It being by the said stipulation agreed that the said printed transcript, together with the said stipulation should be certified as the record in said cause for the consideration of the said United States Supreme Court.

Witness the Honorable John F. Sharp, Chief Justice of the Supreme Court of the State of Oklahoma, and Seal of said Court affixed this 8th day of June 1917.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of the State of Oklahoma.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greeting:

Being informed that there is now pending before you a suit in which Thomas Gilcrease is plaintiff in error, and G. R. McCullough, H. B. Martin, A. E. Bradshaw and Al Brown are defendants in error, No. 5773, which suit was removed into the said Supreme Court by virtue of a writ of error to the District Court of Tulsa County, State of Oklahoma, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-sixth day of April, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] # 5773. File No. 25,886. Supreme Court of the United States, No. 1056, October Term, 1916. Thomas Gilcrease vs. G. R. McCullough et al. Writ of Certiorari. Filed in Supreme Court of Oklahoma, May 31, 1917. William M. Franklin, Clerk.

[Endorsed:] File No. 25,886. Supreme Court U. S. October Term, 1917. Term No. 466. Thomas Gilcrease, Petitioner, vs. G. R. McCullough et al. Writ of certiorari and return. Filed June 19, 1917.

[redacted]

In the

Supreme Court of the United States

of America

No. ———.

THOMAS GILCREASE, - - - - - Petitioner

vs.

G. R. McCULLOUGH, H. B. MARTIN, A. E. BRADSHAW and AL BROWN, - - - - - Respondents

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Brief on Petition for Certiorari

The petitioner, as plaintiff, filed his action in the District Court, Tulsa County, Oklahoma, to recover the land described therein, and to cancel a certain oil and gas lease by him executed on the 24th day of August, 1909, to Grant R. McCullough, and also to cancel a contract between petitioner and respondents, Grant R. McCullough and H. B. Martin, dated February 8, 1911, and intended to ratify the said lease and provided for operations thereunder and for a division of the proceeds thereof.

The grounds of complaint were that McCul-

lough was the President and managing officer of the bank, where he, Gilcrease, did business; Bradshaw was Gilcrease's guardian and Martin was his attorney in litigation involving the determination of a departmental oil and gas lease upon these lands, which were then being operated thereunder, and that these parties by fraud and over-reaching obtained this lease of a value of more than $300,000.00, for less than a tenth of its value;

And, Gilcrease further alleged in said petition that at the time of the execution of both the original lease of August 24, 1909, and the contract of February 8, 1911, he was a minor, within the meaning of the Act of Congress of May 27, 1908, and was not twenty-one years of age, as his age appeared by the enrollment records in the office of the Commissioner to the Five Civilized Tribes.

The trial court found against petitioner, and on appeal to the Supreme Court, that court first handed down an opinion holding the transactions fraudulent on their face and did not pass upon the Federal question involved,—that is, the question of Gilcrease's minority.

Defendants below, respondents here, filed a petition for re-hearing, which was granted and the court in its opinion handed down on the 10th day of October, 1916, denied petitioner any relief and held that the enrollment records dated "June 9-99" showing petitioner to be nine years of age, were

not conclusive that he was a minor on February 8th, 1911, but holding the original lease void and not susceptible of ratification, but that the contract of February 8th, 1911, was in itself, sufficient as a lease and valid.

Paragraph five of the Syllabus says:

"Assuming that we can take judicial notice that June 9-99 appearing on the lower right hand corner of the enrollment record was the date of plaintiff's enrollment and that he was nine years old on that date, such is only conclusive that on said date he had passed his ninth birthday and had not yet reached his tenth, and does not prove that he was a minor on February 8th, 1911, the date of the lease sought to be set aside on the grounds of minority, which was four months and one day less than twelve years thereafter."

The records show that petitioner was a Creek Indian of one-eighth blood, enrolled as of June 9th, 1899, as nine years of age, that the lands in controversy were his allotment and as the only question before this court is—the validity of this original lease of August 24, 1909, and operating contract of February 8, 1911, as affected by the evidence of Gilcrease's age under the Act of Congress, we insert here the said lease and the said contract, together with the enrollment record; the lease is as follows:

"Oil and Gas Mining Lease. This Agreement, Made this 24th day of August, 1909, by and between Thomas Gilcrease, party of the first part, and Grant R. McCullough, party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Seventeen Thousand ($17,000.00) Dollars, the receipt of which is hereby acknowledged, and for the further consideration of the rents, covenants and agreements hereinafter provided, has granted, demised, let and leased and does by these presents grant, demise, let and lease unto the party of the second part, his heirs, successors and assigns all the oil and gas in and under that certain tract of land hereinafter described and also all the said tract of land hereinafter described, for the purpose and with the exclusive right of drilling and operating thereon for said oil and gas, both as to wells now opened and operated upon said land and as to all wells which may hereafter be drilled, opened and operated thereon, which said tract of land is situated in Tulsa County, State of Oklahoma, and described as follows, to-wit:

> 'The south half (1-2) of the northwest quarter (1-4) and the north half (1-2) of the southwest quarter (1-4) of section twenty-two (22), township seventeen (17) north of range twelve (12) east of the Indian Meridian, containing 160 acres.'

The said party of the first part grants the further privilege unto the party of the second part, his heirs, successors and assigns of using sufficient water and gas from the premises necessary to the operations thereon and all rights and privileges necessary or convenient for conducting said operations and the transportation of oil and gas, and the right to remove at any time, machinery or fixtures placed on the premises by said party of the second part.

TO HAVE AND TO HOLD the same unto the said party of the second part, his heirs, successors and assigns, for the term of fifteen years and as long thereafter as oil or gas is being produced therefrom by said party of the second part, his heirs, successors or assigns. The term of this lease to begin at the time of the expiration or cancellation of a certain lease of said premises heretofore executed by William L. Gilcrease, as guardian of Thomas Gilcrease, to William H. Milliken, and the said term of this lease shall run for fifteen years thereafter and as long thereafter as oil or gas is being produced as aforesaid.

In consideration whereof, the said party of the second part agrees to deliver to the party of the first part, in tanks or pipe lines, the one-eighth (1-8) part of all oil produced and saved from the leased premises. And should gas be found on said premises in paying quantities, said party of the

second part agrees to pay One Hundred ($100.00) Dollars yearly, for the product of each gas well while the same is being sold off the premises, but the party of the second part shall have the right to use sufficient gas, oil and water to drill all wells and for all purposes necessary or convenient in operating the same.

All rentals and other payments may be made directly to the party of the first part or may be deposited to his credit at the Bank of Oklahoma in the City of Tulsa.

All the conditions and terms of this grant and lease shall extend to and be binding upon the heirs, successors and assigns of the parties hereto.

In Witness Whereof, We have hereunto set our hands this 24th day of August, 1909.

Thos. Gilcrease,

Party of the First Part.

Grant R. McCullough,
Party of the Second Part.

State of Oklahoma, County of Tulsa, ss.

On this 24th day of August, 1909, before me, A. B. Davis, a Notary Public in and for said County and State, personally appeared Thomas Gilcrease, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same

as his free and voluntary act and deed, for the uses and purposes therein named.

Witness my hand and official seal, this 24th day of August, 1909.

(SEAL) A. B. DAVIS, Notary Public.
My commission expires November 26, 1911.

Filed for record in Tulsa, Oklahoma, August 25, 1909, at 4 o'clock P. M.

(SEAL) H. C. WALKLEY, Register of Deeds.

State of Oklahoma, County of Tulsa, ss.

I, H. C. Walkley, Register of Deeds in and for the County and State above named, do hereby certify that the foregoing is true and correct copy of a like instrument now of record in my office and recorded in Book 70, page 11.

Dated the 19th day of February, 1912.

H. C. WALKLEY, Register of Deeds."

The contract is as follows:

"Contract. This Indenture, made and entered into this 8th day of February, 1911, by and between Thomas Gilcrease, G. R. McCullough and H. B. Martin,

WITNESSETH: That for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto contract and agree that the said Thomas Gilcrease, G. R. McCullough and

H. B. Martin, their respective heirs, administrators and assigns, shall have and hold, in the proportions hereinafter described, the execlusive right to mine oil and gas from and upon the premises hereinafter described, to-wit:

> 'The south one-half (1-2) of the northwest quarter (1-4) and the north one-half (1-2) of the southwest quarter (1-4) of section twenty-two (22), township seventeen (17) north, range twelve (12) east of the Indian Meridian in the County of Tulsa, and State of Oklahoma.'

as long as oil and gas, or either of them, are found upon said premises in paying quantities.

The said Thomas Gilcrease shall receive as royalty for said leased premises, one-eighth (1-8) of all the oil mined and saved upon said premises, delivered in pipe line, and such royalty shall be paid at any time after the sale of such oil, upon demand of the said Thomas Gilcrease. And in addition to said royalty the said Thomas Gilcrease, his heirs, executors and assigns, shall have and hold an undivided one-fourth (1-4) of the leasehold interest in said property; the said G. R. McCullough, his heirs, administrators and assigns, shall have and hold an undivided one-half (1-2) of the leasehold interest in said land; and the said H. B. Martin, his heirs, administrators and assigns, shall have and hold an undivided one-fourth (1-4) of the leasehold interest in said land.

And it is further contracted, covenanted and

agreed that the parties hereto, their heirs, administrators and assigns, shall operate said lease for oil mining purposes from this date as long as oil and gas is found thereon in paying quantities, and that after the payment of the royalty hereinbefore provided for to the said Thomas Gilcrease, that all of the balance of the proceeds of the oil produced from said leased premises, less necessary operating expenses, shall be applied to the payment of the cost of equipment of said lease until such equipment shall have been fully paid for out of said proceeds.

And it is further contracted, covenanted and agreed that the equipment now upon said leased premises, and hereafter to be placed upon said leased premises, shall be and remain the personal property of the said Thomas Gilcrease, G. R. McCullough and H. B. Martin, their heirs, executors and assigns, in the proportion of the interests of said parties in said leasehold, as evidenced by this contract.

And it is further covenanted, contracted and agreed that the said parties shall not remove any of said equipment, including powers, engines, tanks, lead pipes, houses, tubing, rods, casing, or any other portion of said equipment from any wells upon said leased premises, as long as oil is produced from said wells in paying quantities, but that when such wells shall become exhausted and

no longer produce oil in paying quantities, then such equipment may be removed by said parties hereto, their heirs, administrators and assigns.

And it is further covenanted and contracted that the expense of operation of said leased premises for mining purposes shall be paid by the parties hereto in the proportion of their respective interests as hereinbefore described, except that the royalty interest fo the said Thomas Gilcrease shall not be liable for any of the expense of the equipment or operation of said lease, and shall be free from any expense whatever.

In Witness Whereof, We have hereunto set our hands this 8th day of February, 1911.

THOMAS GILCREASE
G. R. MCCULLOUGH
H. B. MARTIN

State of Oklahoma, County of Tulsa, ss.

Before, me, Benjamin C. Connor, a Notary Public in and for said County and State on this 8th day of February, 1911, personally appeared Thomas Gilcrease, G. R. McCullough and H. B. Martin, to me known to be the identical persons who executed the foregoing instrument and acknowledged to me, each for himself, that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

(SEAL) BENJAMIN C. CONNOR.

My commission expires March 29, 1911."

The enrollment records are as follows:

DEPARTMENT OF THE INTERIOR, COMMISSIONER TO THE FIVE CIVILIZED TRIBES. CREEK ROLL, CITIZENS BY BLOOD.

No.	Name	Age	Sex	Blood	Card
1505	Gilcrease, Thos.	9	M	1-8	456

This is to certify that I am the officer having custody of the approved roll of Creek Citizens by blood of Creek Nation and that the above and foregoing is a true and correct copy of that portion of said roll appearing at Number 1505, enrolled as of June 9, 1899.

Post office Leonard, Oklahoma.

J. G. WRIGHT,

Commissioner to the Five Civilized Tribes.

C. D. DREWS,

Clerk.

Muskogee, Oklahoma, April 3, 1913.

Residence, Leonard, Post Office, Ind. Ter.

Creek Nation, Creek Roll, Card No. 456, Field No. 458.

Dawes' Roll No., Name, Relationship to person first named. Tribal enrollment, Year, Town, No. Tribal Enrollment of Parents, Name of Father, Year, Town, Name of Mother, Year, Town.

1. 1504, Gilcrease, Lizzie, 25, F, 1-4, Broken Arrow, H. G. Vowell, Non-citizen, Martha (self) Vowell, Broken Arrow.

2. 1505, Gilcrease, Thomas, Son, 9, M, 1-8, Broken Arrow, Wm. L. Gilcrease, Non-citizen, No. 1.

3. 1506, Gilcrease, Eddie, Son, 7, M, 1-8, Broken Arrow, Wm. L. Gilcrease, Non-citizen, No. 1.

4. 1507, Gilcrease, Ben, Son, 5, M. 1-8, Broken Arrow, Wm. L. Gilcrease, Non-citizen, No. 1.

5. 1508, Gilcrease, Lena, Dau., 3, F, 1-8, Broken Arrow, Wm. L. Gilcrease, Non-citizen, No. 1. June 9, '99.

6. 1509, Gilcrease, Florence, Dau., 1, F, 1-8, Broken Arrow, Wm. L. Gilcrease, Non-citizen, No. 1.

(131) Nos 1, 2, 3 and 4 admitted by Colbert Citizenship Commission, Sept. 1, 1896, (See Creek Citizenship Record, No. 1, pages 106 to 111).

No. 5 born subsequent to application to Colbert Commission.

Citizenship Certificate issued June 9th, 1899.

Department of the Interior

Commissioner to the Five Civilized Tribes

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the lands of said tribes, and that the above and foregoing is a true and correct copy of the enrollment records on file in this office in so far as the same pertains to the enrollment of Thomas Gilmore Creek by blood

Roll no. 1505

Commissioner to the Five Civilized Tribes

MUSKOGEE, OKLAHOMA

APR 3 - 1913

CREEK NATION CREEK ROLL

Residence: [illegible]

Post Office: [illegible], Ind. Ter.

Card No. 456

Field No. 458

Dawes' Roll No.		Name	Relationship to Person first Named	Age	Sex	Blood	Tribal Enrollment Year	Town	No.	Name of Father	Year	Town	Name of Mother	Year	Town
1504	1	Gilmore, Lizzie		26	F	1/4		Broken Arrow		H. G. Yowell		non-Citizen	Martha Yowell		Broken Arrow
1505	2	" , Thomas	Son	9	M	1/8		" "		Wm. L. Gilmore		" "	No. 1		
1506	3	" , Eddie	"	7	"	1/8		" "		" " "		" "	No. 1		
1507	4	" , Ben	"	5	"	1/8		" "		" " "		" "	No. 1		
1508	5	" , Lena	Dau	3	F	1/8		" "		" " "		" "	No. 1		
1509	6	" , Florence	"	1	"	1/8		" "		" " "		" "	No. 1		
	7														
	8	(131)					Nos. 1, 2, 3 and 4 admitted by Colbert Citizenship Commission, 1895 [illegible], see								
	9						Creek Citizenship Record No. 1, pages 106 to [illegible]								
	10						No. 6 born subsequent to application to Colbert Commission								
	11														
	12														
	13														
	14														
	15														
	16														
	17														
	18														June 9/99

Citizenship certificate issued June 9th 1899

ENROLLMENT of Nos. 1 to 6 inclusive HEREON APPROVED BY THE SECRETARY OF INTERIOR March 13, 1902

It is agreed that this may be inserted in petitioner's brief in lieu of page 12, and part of page 13, to and including the words, "Muskogee, Oklahoma, April 3, 1913, C.C.D.", and that it is an actual photographic reproduction of the original records introduced as plaintiff's "Exhibit S" on the trial in the court below.

A. J. Biddison
Attorney for Petitioner.

James B. Diggs
Attorney for Respondent

THIS PAGE BOUND VERTICAL IN BOOK

Enrollment of Nos. 1504-1509 incl. hereon approved by the Secretary of the Interior March 13, 1902.

DEPARTMENT OF THE INTERIOR, COMMISSIONER TO THE FIVE CIVILIZED TRIBES.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the lands of said tribes, and that the above and foregoing is a true and correct copy of the enrollment records on file in this office insofar as the same pertains to the enrollment of Thomas Gilcrease, Creek by blood, Roll No. 1505.

J. G. WRIGHT,

Commissioner to the Five Civilized Tribes.

Muskogee, Oklahoma, April 3, 1913, C. D. D."

The court after granting the re-hearing to respondents and determining the case, specially allowed your petitioner to file a petition for re-hearing on his own behalf and that petition for rehearing was denied on January 9, 1917, and by that decision, without opinion, the Court affirms its decision of October 10, 1916, and holds these transactions valid.

It is the contention of your petitioner that these

transactions, to-wit, the lease of August 24, 1909, and the contract of February 8, 1911, are void under the Act of Congress of May 27, 1908, which provides:

> "Section 2. That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal; Provided; That lessees of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise; And provided further, That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this Act, shall include all males under the age of twenty-one years and all females under the age of eighteen years.
>
> Section 3. That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said tribes and of no other persons to determine questions arising under this Act and the enrollment records of the commis-

sioner to the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of said citizen or freedman.

Section 5. That any attempted alienation or incumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of incumbering real estate, made before or after the approval of this Act, which affects the title of the land allotted to allottees of the Five Civilized Tribes prior to removal of restrictions therefrom, and also any lease of such restricted land made in violation of law before or after the approval of this Act shall be absolutely null and void.

Section 6. That the persons and property of minor allottees of the Five Civilized Tribes shall except, as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma."

This statute was held by this Court in *Trusket* v. *Closser,* 236 U. S. 223, to impose a restriction of minority upon the lands of minor Indians of the Five Civilized Tribes and make void any lease, grant or incumbrance of their lands and this proposition was conceded by the Court below, but the question raised is whether or not Gilcrease was a minor within the meaning of the Act.

As above stated, the Act provides that the enrollment records shall be conclusive evidence as to the age and further believes that males are minors when under the age of twenty-one years.

It was unquestionably the purpose of Congress

in enacting this legislation to eliminate the perjury with which our Court abounded on the question of the age of persons desiring to convey their land and to fix a record or rule by which persons might be governed in determining whether or not a person had the right to convey and this proposition has been uniformly recognized by the courts in *Bell* v. *Cook,* 192 Fed. Rep. 597. Judge Pollock, writing the opinion for the Circuit Court of the Eastern District of Oklahoma, says:

> "Congress did not intend to make that which was black white, or the reverse, nor did it undertake to overthrow the multiplication table, neither of these things could it do, nor did it attempt. But what Congress intended to accomplish, and did accomplish, by declaring the enrollment records of Commissioner to the Five Civilized Tribes shall hereafter be conclusive evidence as to the age of such citizen or freedman, was to require resort to the rolls and records as a fixed and definite public record from which alone can be ascertained whether an allottee does, or does not, possess the qualified age or requisite degree of Indian blood to enable him to alienate his lands."

In *Rice* v. *Anderson,* 39 Okla. 279, 134 Pac. Rep. 1120, the Supreme Court of Oklahoma said:

> "The purpose of the Act of Congress making the enrollment records conclusive evidence of the age of an allottee was to exclude oral evidence as to the question of age, and the conclusive presumption of law is that the allottee

> is of the exact age shown by those records and not merely that the age thus shown is the age at nearest birthday."

In *Linam et al* v. *Beck,* 152 Pac, Rep. 344, (not yet officially reported), the Supreme Court of Oklahoma also said:

> "Where an action is brought to remove cloud from and to recover lands allotted to an Indian, predicated upon a conveyance executed by such allottee on Sept. 6, 1911, and the enrollment records of the Five Civilized Tribes introduced in evidence show that the allottee was enrolled as of September 20, 1900, at which time he was ten years of age, September 20, the date of enrollment, would be regarded as his birthday, and hence he was a minor on September 6, 1911."

The same doctrine is announced by that Court in *Campbell* v. *McSpadden,* 34 Okla. 377, 127 Pac. 854. In *Phillips et al* v. *Byrd,* 43 Okla. 556, that Court says:

> "Such Act is not nor was it intended to be a rule of evidence; but the purpose of said Act is to prescribe terms and conditions upon which members of the Five Civilized Tribes of Indians may alienate their land and to prescribe a fixed and uniform rule by which those contracting with such members of said Tribes could determine the exact date minors may reach their majority for the purpose of alienating their land."

A similar rule is recognized in *Newsom* v. *Langford,* 174 S. W. 1036, (not yet officially re-

ported), where the Court of Civil Appeals of Texas announced the doctrine.

The same doctrine is announced in *Yarbrough* v. *Spaulding et al,* 31 Okla. 806, 123 Pac. 843.

These were all cases in which just such an enrollment was had as in the case at bar. But in the case at bar, the Court undertakes to make the distinction that the birthday not being shown, that the record does not show how much passed nine years of age petitioner was on the 9th day of June, 1911, and that therefore he might have been twenty-one years of age at any time within the year previous.

It is the purpose of the Act of Congress to make and establish a rule of alienation and to make actual age absolutely immaterial, but age as shown by the records alone is material and the record did not show petitioner to be twenty-one years of age on February 8, 1911.

This Court had held in *Hagler* v. *Faulkner,* 153 U. S. 109,

That in the absence of such a statute the enrollment records had no probative force and Congress could not and did not attempt to give them probative force as showing age, but only attempted to fix a rule of alienation that those who appeared by the roll to be minors could not alienate their lands.

A record that shows a person to be exactly nine years of age shows his age as conclusively as one that shows his age to be nine years, four months and one day and there can be no presumption that he is older than the record shows or that his actual age fixed in years is different from what the record shows. Where the record shows years only, as it does in nearly all cases, it determines that age to be even years and not years and fractions thereof.

Conclusive evidence as defined by Bouvier is:

> "Evidence, which of itself, whether contradicted or uncontradicted, explained or unexplained, is sufficient to determine the matter at issue.
>
> Evidence upon the production of which the Judge is bound by law to regard some fact as proved and to exclude evidence to contradict it."

As defined in Encyclopedia of Evidence, Vol. 3, page 268:

> "Conclusive evidence is that character of evidence which either forbids or dispenses with any ulterior inquiry as to the matter sought to be established by proof."

In *M. K. & T. Ry. Co.* v *Simonson,* 64 Kansas 802:

> "A statute which declares what shall be taken as conclusive evidence of a fact, is one which, of course, precludes investigation into

the fact and itself determines the matter in advance of all judicial inquiry."

It is, therefore, apparent that it was the purpose of Congress to enact substantive law and not a rule of evidence and make that evidence, which this Court had held, had no probative force.

Mr. Wigmore, in his valuable work on evidence, Chapter 42, reaches the conclusion that under our constitutional government the legislative department can not make one fact conclusive evidence of another, if the letter fact is one which the legislature has not power to withdraw from judicial investigation and that all acts attempting to make one fact conclusive evidence of another, can only be constitutional as substantive law and are not in fact rules of evidence.

The effect of the Act of Congress, therefore, is to make the enrollment record the guide and index of the power of alienation and to make actual age in all cases entirely immaterial and the enactment is one of substantive law to the effect that the presumption is conclusive, that the allottee is of the exact age show by the enrollment record.

Judged by this rule, petitioner is shown to be a minor until the 9th day of June, 1911, and his contracts made in August, 1909, and in February, 1911, are absolutely void.

Any other construction of the act again opens the records to limitless perjury and leaves an un-

certainty of a year as to the time when the allottee can convey and makes the confusion that existed before the Act of Congress, worse confounded.

We respectfully submit, therefore, that the confusion that has arisen by reason of the conflicting decisions of the Oklahoma Supreme Court and the unsettled state of the law and the vast interests involved, make it important that this court issue its Writ of Certioriari and determine the meaning of the Act of Congress and fix the standard that Congress attempted to fix and we think did fix, by which all persons may know when a Creek allottee may alienate his land.

Respectfully,

A. J. BIDDISON,

Attorney for Petitioner.